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# federal register

Friday
January 16, 1998

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 97–NM–267–AD; Amendment 39–10284; AD 98–02–02]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped with Pratt & Whitney JT9D–3 and –7 Series Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires repetitive inspections for discrepancies of the forward engine mount bulkhead of the nacelle strut, and corrective action, if necessary. That AD also provides for optional terminating action for the repetitive inspections. For certain airplanes, this amendment adds repetitive inspections for discrepancies in the forward engine mount bulkhead and in the forward lower spar web, and corrective actions, if necessary. For other airplanes, this amendment adds a one-time inspection to detect stop drilled cracks of the exterior of the forward engine mount chord, and replacement of the chord with a new chord, if necessary. This amendment also adds an additional optional terminating action for the repetitive inspections. This amendment is prompted by reports that fatigue cracking was found in an area adjacent to the inspection area specified in the existing AD. The actions specified in this AD are intended to detect and correct such fatigue cracking, which could lead to the failure of the forward engine mount bulkhead and consequent separation of the engine from the airplane.

**DATES:** Effective February 2, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 2, 1998.

Comments for inclusion in the Rules Docket must be received on or before March 17, 1998.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–267–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Tamara L. Dow, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:** On October 2, 1982, the FAA issued AD 82–22–02, amendment 39–4476 (47 FR 46842, October 21, 1982), applicable to certain Boeing Model 747 series airplanes, to require repetitive inspections for discrepancies of the forward engine mount bulkhead of the nacelle strut, and corrective action, if necessary. That AD also provides for optional terminating action (installation of a new doubler) for the repetitive inspections. That action was prompted by reports of cracks in doublers that were installed as terminating action for AD 80–03–09, amendment 39–3832. The actions required by AD 82–22–02 are intended to prevent failure of the forward engine mount bulkhead and possible separation of an engine from the airplane.

### Actions Since Issuance of Previous Rule

Since the issuance of AD 82–22–02, the FAA has received two reports of fatigue cracking in an area adjacent to the inspection area specified in that AD on the affected airplanes. In one incident, a 5-inch long crack was found in the forward lower spar web aft of the bulkhead-to-firewall channel, and a 2-inch long crack was found in the bend radius of the chord of the forward mount bulkhead. These cracks occurred on the number 4 pylon. The airplane had accumulated 15,200 total landings and 67,600 total flight hours. In the other incident, a 2.5-inch crack was found in the chord of the forward mount bulkhead, and a 1.5-inch and 4-inch cracks were found in the forward lower spar web. These cracks occurred on the number 3 pylon.

Such fatigue cracking, if not detected and corrected in a timely manner, could lead to the failure of the forward engine mount bulkhead and consequent separation of the engine from the airplane.

### Discussion of Relevant Service Information

Subsequent to the finding of this new cracking, the FAA reviewed and approved Boeing Alert Service Bulletin 747–54A2069, Revision 9, dated May 29, 1997. The revised alert service bulletin continues to describe procedures identical to those described in Revision 2 of the alert service bulletin (which was referenced in AD 82–22–02 as the appropriate source of service information). However, the revised alert service bulletin also describes new procedures for various repetitive inspections to detect discrepancies (i.e., cracks, damage, loose fasteners) in the forward engine mount bulkhead and in the forward lower spar web, and corrective actions, if necessary. The revised alert service bulletin also deletes the procedures for stop drilling cracks in the bulkhead chords.

The FAA also has reviewed and approved the following Boeing service information:

- Alert Service Bulletin 747–54A2069, Revision 3, dated May 23, 1980;
- Alert Service Bulletin 747–54A2069, Revision 4, dated November 26, 1980;
- Service Bulletin 747–54A2069, Revision 5, dated August 21, 1981;
- Alert Service Bulletin 747–54A2069, Revision 6, dated October 22, 1982;
- Service Bulletin 747–54A2069, Revision 7, dated July 28, 1988; and

• Service Bulletin 747–54A2069, Revision 8, dated June 9, 1994.

The inspection procedures specified in Revisions 3 through 8 of the service bulletin are similar to those specified in Revision 2 of the service bulletin. Therefore, the FAA has included in this AD references to these service bulletin revisions as additional sources of service information.

**Explanation of Requirements of Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 82–22–02 to continue to require repetitive inspections for discrepancies of the forward engine mount bulkhead of the nacelle strut, and corrective action, if necessary. This AD adds various repetitive inspections to detect discrepancies (i.e., cracks, damage, loose fasteners) in the forward engine mount bulkhead and in the forward lower spar web, and corrective actions, if necessary. This AD also adds an additional optional terminating action for the repetitive inspections. Unlike the requirements of AD 82–22–02, this AD does not permit further flight with cracks in the bulkhead chords.

**Differences Between the AD and the Relevant Service Information**

Operators should note that, although the referenced service bulletins specify that the manufacturer must be contacted for disposition of certain conditions, this AD requires the repair or replacement of any cracked chord and/or web to be accomplished in accordance with a method approved by the FAA.

The referenced service bulletins also specify that accomplishment of AD 95–10–16, amendment 39–9233 (59 FR 65733, December 21, 1994), is terminating action for the repetitive inspections. However, for airplanes on which the strut/wing modification required by AD 95–10–16 has been accomplished, this AD requires a one-time detailed visual inspection to detect stop drilled cracks of the exterior of the forward engine mount chord. The FAA has determined that accomplishment of this inspection will ensure that all chords with stop drilled cracks are replaced.

**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.

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 97–NM–267–AD.'' The postcard will be date stamped and returned to the commenter.

**Regulatory Impact**

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

The FAA has determined that this regulation is an emergency regulation 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, Incorporation by reference, 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 removing amendment 39–4476 (47 FR 46842, October 21, 1982), and by adding a new airworthiness directive (AD), amendment 39–10284, to read as follows:

**98–02–02 Boeing:** Amendment 39–10284. Docket 97–NM–267–AD. Supersedes AD 82–22–02, Amendment 39–4476.

*Applicability:* Model 747 series airplanes; as listed in Boeing Alert Service Bulletin 747–54A2069, Revision 9, dated May 29, 1997; certificated in any category.

**Note 1:** The airplanes specified in the applicability of this AD are the same as those specified in the applicability of AD 82–22–02.

**Note 2:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the forward engine mount bulkhead, which

could lead to the failure of the forward engine mount bulkhead and consequent separation of the engine from the airplane, accomplish the following:

(a) For airplanes on which the terminating action specified in AD 80–03–09, amendment 39–3832, has been accomplished: Within 300 hours time-in-service after October 27, 1982 (the effective date of 82–22–02, amendment 39–4476), accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD. Repeat the inspections thereafter at intervals not to exceed 4,000 flight hours, until accomplishment of the inspections required by paragraphs (c)(1) and (c)(2) of this AD or the terminating action specified in paragraph (e) of this AD.

(1) Perform an inspection to detect loose or missing fasteners of the fasteners attaching the forward engine mount bulkhead of the nacelle strut to the horizontal fire wall, in accordance with one of the following service bulletins listed below. If any loose or missing fastener is detected, prior to further flight, replace all fasteners in both rows of fasteners, in accordance with the service bulletin.

- Boeing Alert Service Bulletin 747–54A2069, Revision 2, dated February 1, 1980;
- Boeing Alert Service Bulletin 747–54A2069, Revision 3, dated May 23, 1980;
- Boeing Alert Service Bulletin 747–54A2069, Revision 4, dated November 26, 1980;
- Boeing Service Bulletin 747–54A2069, Revision 5, dated August 21, 1981;
- Boeing Alert Service Bulletin 747–54A2069, Revision 6, dated October 22, 1982;
- Boeing Service Bulletin 747–54A2069, Revision 7, dated July 28, 1988;
- Boeing Service Bulletin 747–54A2069, Revision 8, dated June 9, 1994; or
- Boeing Alert Service Bulletin 747–54A2069, Revision 9, dated May 29, 1997.

(2) Remove by hand the protective coating of the area to be penetrant inspected using 400 grit or equivalent abrasive, and perform a penetrant inspection to detect cracks of the bulkhead chords, in accordance with one of the service bulletins listed below:

- Boeing Alert Service Bulletin 747–54A2069, Revision 2, dated February 1, 1980;
- Boeing Alert Service Bulletin 747–54A2069, Revision 3, dated May 23, 1980;
- Boeing Alert Service Bulletin 747–54A2069, Revision 4, dated November 26, 1980;
- Boeing Service Bulletin 747–54A2069, Revision 5, dated August 21, 1981;
- Boeing Alert Service Bulletin 747–54A2069, Revision 6, dated October 22, 1982;
- Boeing Service Bulletin 747–54A2069, Revision 7, dated July 28, 1988;
- Boeing Service Bulletin 747–54A2069, Revision 8, dated June 9, 1994; or
- Boeing Alert Service Bulletin 747–54A2069, Revision 9, dated May 29, 1997.

(i) If any crack is detected on the outside radius of the chord, and it is within the limits specified in the service bulletin, prior to further flight, perform a penetrant inspection to detect cracks on the inside radius of the chord, in accordance with the service bulletin.

(A) If any crack is detected on the inside radius of the chord, and it is within the limits specified in the service bulletin, prior to further flight, rework the cracked part in accordance with the service bulletin. Repeat the penetrant inspection required by paragraph (a)(2) of this AD thereafter at intervals not to exceed 600 flight hours, until accomplishment of the inspections required by paragraphs (c)(1) and (c)(2) of this AD or the terminating action specified in paragraph (e) of this AD.

(B) If any crack is detected on the inside radius of the chord, and it is outside the limits specified in the service bulletin, prior to further flight, replace the cracked part with a new part, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(ii) If any crack is detected on the outside radius of the chord, and it is outside the limits specified in the service bulletin, prior to further flight, replace the cracked part with a new part in accordance with a method approved by Seattle ACO.

(3) Perform an inspection to detect evidence of looseness of the fasteners attaching the forward engine mount fittings to the strut bulkhead. If any loose fastener is detected, prior to further flight, replace it with a new fastener.

(b) For airplanes on which only loose fasteners have been replaced as required by telegraphic AD T79–NW–21, amendment 39–3687: Within 600 hours time-in-service after October 27, 1982, replace all fasteners in both rows of fasteners with new fasteners in accordance with one of the service bulletins listed below:

- Boeing Alert Service Bulletin 747–54A2069, Revision 2, dated February 1, 1980;
- Boeing Alert Service Bulletin 747–54A2069, Revision 3, dated May 23, 1980;
- Boeing Alert Service Bulletin 747–54A2069, Revision 4, dated November 26, 1980;
- Boeing Service Bulletin 747–54A2069, Revision 5, dated August 21, 1981;
- Boeing Alert Service Bulletin 747–54A2069, Revision 6, dated October 22, 1982;
- Boeing Service Bulletin 747–54A2069, Revision 7, dated July 28, 1988;
- Boeing Service Bulletin 747–54A2069, Revision 8, dated June 9, 1994; or
- Boeing Alert Service Bulletin 747–54A2069, Revision 9, dated May 29, 1997.

(c) For airplanes on which the strut/wing modification required by AD 95–10–16, amendment 39–9233, has not been accomplished: Within 90 days after the effective date of this AD, accomplish paragraphs (c)(1) and (c)(2) of this AD.

(1) Perform various inspections to detect discrepancies (i.e., cracks, damage, loose fasteners) in the forward engine mount bulkhead and in the forward lower spar web, in accordance with Figure 1 of Boeing Alert Service Bulletin 747–54A2069, Revision 9, dated May 29, 1997. If any discrepancy is detected, prior to further flight, perform the applicable corrective action in accordance with Figure 1 of the alert service bulletin; except the repair or replacement of any cracked chord and/or web shall be accomplished in accordance with a method approved by the Manager, Seattle ACO. Repeat the inspections thereafter at intervals not to exceed 4,000 flight hours.

(2) Perform an inspection to detect evidence of looseness of the fasteners attaching the forward engine mount fittings to the strut bulkhead. If any loose fastener is detected, prior to further flight, replace it with a new fastener in accordance with Boeing Document D6–13592, ''747 Structural Repair Manual (SRM),'' Chapter 51, Subject 51–30–04, Revision 8, dated September 5, 1997.

(d) For airplanes on which the strut/wing modification required by AD 95–10–16, amendment 39–9233, has been accomplished: Within 90 days after the effective date of this AD, perform a detailed visual inspection to detect stop drilled cracks of the exterior of the forward engine mount chord. Inspect to the height of the engine mount fitting (approximately 12 inches). If any crack (including a stop drilled crack) is detected, prior to further flight, replace the chord with a new chord in accordance with a method approved by the Manager, Seattle ACO.

**Note 3:** Inspections required by AD 94–17–17, amendment 39–9012, are similar and somewhat overlap the inspections required by this AD.

(e) Accomplishment of either paragraphs (e)(1) and (e)(2), or paragraphs (e)(2) and (e)(3) of this AD constitutes terminating action for the requirements of this AD.

(1) Modify the fasteners and install a doubler on the forward lower spar web, or replace the doubler of the forward lower spar web with a new doubler, in accordance with Figure 2 or Figure 3, as applicable, of Boeing Alert Service Bulletin 747–54A2069, Revision 6, dated October 22, 1982; Boeing Service Bulletin 747–54A2069, Revision 7, dated July 28, 1988; Boeing Service Bulletin 747–54A2069, Revision 8, dated June 9, 1994; or Boeing Alert Service Bulletin 747–54A2069, Revision 9, dated May 29, 1997.

(2) Replace any cracked forward engine mount bulkhead chord with a new chord, and replace any cracked forward lower spar web with a new web, in accordance with a method approved by the Manager, Seattle ACO.

(3) Modify the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994; Revision 1, dated June 1, 1995; or Revision 2, dated March 14, 1996.

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

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

(h) Except as provided in paragraphs (a)(2)(i)(B), (a)(2)(ii), (c)(1), (c)(2), (d), and

(e)(2) of this AD, the actions shall be done in accordance with the following Boeing service bulletins, as applicable, which contain the specified effective pages:

| Service bulletin referenced and date | Page No. | Revision level shown on page | Date shown on page |
|---|---|---|---|
| Alert Service Bulletin 747–54A2069, Revision 2, February 1, 1980 | 1–9 | 2 | February 1, 1980. |
| Alert Service Bulletin 747–54A2069, Revision 3, May 23, 1980 ..... | 1–7 | 3 | May 23, 1980. |
| | 8 | 2 | February 1, 1980. |
| Alert Service Bulletin 747–54A2069, Revision 4, November 26, 1980. | 1, 9, 10, 12, 19–21 | 4 | November 26, 1980. |
| | 2–7, 11, 13–18 | 3 | May 23, 1980. |
| | 8 | 2 | February 1, 1980. |
| Service Bulletin 747–54A2069, Revision 5, August 21, 1981 ..... | 1–7, 9, 10, 17 | 5 | August 21, 1980. |
| | 8 | 2 | February 1, 1980. |
| | 11, 13–16, 18 | 3 | May 23, 1980. |
| | 12, 19–21 | 4 | November 26, 1980. |
| Alert Service Bulletin 747–54A2069, Revision 6, October 22, 1982 | 1–28 | 6 | October 22, 1982. |
| Service Bulletin 747–54A2069, Revision 7, July 28, 1988 ..... | 1–5, 7–16, 24, 28 | 7 | July 28, 1988. |
| | 6, 17–23, 25–27 | 6 | October 22, 1982. |
| Service Bulletin 747–54A2069, Revision 8, June 9, 1994 ..... | 1–28 | 8 | June 9, 1994. |
| Alert Service Bulletin 747–54A2069, Revision 9, May 29, 1997 ..... | 1–28 | 9 | May 29, 1997. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on February 2, 1998.

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

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 98–713 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 95–NM–94–AD; Amendment 39–10285; AD 98–02–03]**

**RIN 2120–AA64**

## Airworthiness Directives; Fokker Model F28 Mark 0100 and Mark 0070 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 and Mark 0070 series airplanes, that requires modification of the hook and latch engagement assemblies of the engine cowl doors, measurement of the aerodynamic mismatch between the fixed cowl and lower cowl door, and repair, if necessary. This amendment is prompted by reports of operational experience that indicate that an aerodynamic mismatch may exist between the fixed engine cowl and the lower cowl door, and may be the result of one or more hooks of the engagement assemblies not engaging adequately. This condition may cause the other hooks to carry loads higher than they were originally designed to carry, and could result in the failure of those hooks that are engaged. The actions specified by this AD are intended to prevent possible separation of the lower cowling from the airplane due to failure of the hooks of the engagement assemblies.

**DATES:** Effective February 20, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 20, 1998.

**ADDRESSES:** The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P. O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 and Mark 0070 series airplanes was published in the **Federal Register** on November 5, 1996 (61 FR 56925). That action proposed to require modification of the hook and latch engagement assemblies of the engine cowl doors, measurement of the aerodynamic mismatch between the fixed cowl and lower cowl door, and repair, if necessary.

### Comments

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

### Request to Extend the Compliance Time

Two commenters request that the compliance time for accomplishing the proposed inspection specified in paragraph (a)(2) of the AD be changed from ''Within 2,500 flight cycles since the last inspection * * *'' to '' Within 2,500 flight cycles or 3,500 flight hours since the last inspection * * *, whichever occurs later.'' One of these commenters states that it is currently accomplishing the proposed inspection on its fleet of Fokker Model F28 Mark 0100 series airplanes during its regularly scheduled maintenance checks at 3,500 flight hour intervals. The commenter notes that the proposed 2,500 flight cycle inspection time may fall short of its currently scheduled 3,500 flight hour maintenance check.

The FAA does not concur with the commenters' request to change the

compliance time. The FAA points out that the proposed compliance time of paragraph (a)(2) of the AD was developed in consideration of not only the degree of urgency associated with addressing the unsafe condition, but such factors as the manufacturer's and the foreign airworthinesss authority's [i.e., Rijksluchtvaartdienst (RLD)] recommendations, and the practical aspect of inspecting the affected airplanes within an interval of time that parallels normal scheduled maintenance for the majority of affected operators.

Based on the average utilization rate of the worldwide fleet of Fokker Model F28 Mark 0100 series airplanes (approximately 1 flight hour per flight cycle), the request to include a 3,500 flight hour compliance time option, if granted, would be approximately equal to 3,500 flight cycles. This option would result in a 1,000 flight cycle extension to the compliance time. The commenters have not provided any data to substantiate why extending the compliance time by approximately 1,000 flight cycles would not compromise safety. However, under the provisions of paragraph (e) of the final rule, the FAA may approve requests for adjustments to the compliance time if sufficient data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

**Service Bulletin Change Notification**

One commenter states that certain errors were found in the service information referenced in the proposed AD. Paragraph C.(2) of Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–71–019, dated March 21, 1996, should refer to Figure 5 (not Figure 4) for dimensions X and Y. Additionally, Figure 5 of the service bulletin should refer to Figure 6 (not Figure 5) for tool geometry.

The FAA agrees with the commenter. Since issuance of the proposal, Fokker has issued Service Bulletin Change Notification (SBCN) SBF100–71–019/1, dated February 28, 1997, which revises paragraph C.(2) of Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–71–019 to correctly reference Figure 5 for dimensions X and Y. The final rule has been revised to reference SBCN SBF100–71–019/1, dated February 28, 1997, in addition to the previously referenced service information.

In addition, the FAA has determined that the reference in Figure 5 to Figure 5 (rather than Figure 6) for tool geometry is merely a typographical error, since paragraph C.(2) of Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–71–019 states ''As a reference, to obtain the correct measurements, use tool as shown in Figures 5 and 6.'' However, the FAA has forwarded information regarding this error to Fokker Services.

**Conclusion**

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

**Cost Impact**

The FAA estimates that 124 Fokker Model F28 Mark 0100 and 0070 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the initial inspection and modification, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $22,320, or $180 per airplane.

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

**Regulatory Impact**

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

**98–02–03 Fokker**: Amendment 39–10285. Docket 95–NM–94–AD.

*Applicability:* Model F28 Mark 0100 and Mark 0070 series airplanes as listed in Fokker Service Bulletin SBF100–71–019, dated March 21, 1996, as revised by Fokker Service Bulletin Change Notification SBF100–71–019/1, dated February 28, 1997; certificated in any category.

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

*Compliance*: Required as indicated, unless accomplished previously.

To prevent separation of the lower cowling from the airplane due to failure of the hook and latch engagement assembly of the cowl door, accomplish the following:

(a) Accomplish the requirements of paragraph (b) of this AD at the latest of the times indicated in paragraphs (a)(1), (a)(2), and (a)(3) of this AD:

(1) Prior to the accumulation of 2,500 total flight cycles; or

(2) Within 2,500 flight cycles since the last inspection performed in accordance with Fokker Service Bulletin SBF100–71–003, dated April 14, 1989; Revision 1, dated August 8, 1989, or Revision 2, dated November 21, 1994; or

(3) Within 30 days after the effective date of this AD.

(b) At the time specified in paragraph (a) of this AD, accomplish the actions specified in either paragraph (b)(1) or (b)(2) of this AD, as applicable:

(1) For airplanes specified in Part 1 of Fokker Service Bulletin SBF100–71–019, dated March 21, 1996, as revised by Fokker Service Bulletin Change Notification SBF100–71–019/1, dated February 28, 1997: Modify the hook and latch engagement assemblies of the left and right engine cowl doors, and inspect to determine the aerodynamic mismatch between the fixed cowl and lower cowl door; in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–71–019, dated March 21, 1996, as revised by Fokker Service Bulletin Change Notification SBF100–71–019/1, dated February 28, 1997.

**Note 2**: Accomplishment of the modification of the hook and latch engagement assemblies of the left and right engine cowl doors, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–71–003, dated April 14, 1989; Revision 1, dated August 8, 1989; or Revision 2, dated November 21, 1994; is considered acceptable for compliance with the applicable modification specified in paragraph (b)(1) of this amendment.

(2) For airplanes specified in Part 2 of Fokker Service Bulletin SBF100–71–019, dated March 21, 1996, as revised by Fokker Service Bulletin Change Notification SBF100–71–019/1, dated February 28, 1997, excluding those airplanes subject to paragraph (b)(1) of this AD: Perform a one-time inspection to determine the aerodynamic mismatch between the fixed cowl and the lower cowl door, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–71–019, dated March 21, 1996, as revised by Fokker Service Bulletin Change Notification SBF100–71–019/1, dated February 28, 1997.

(c) If the aerodynamic mismatch measured between the fixed cowl and lower cowl door is less than or equal to 4.5 mm, no further action is required by this AD.

(d) If the aerodynamic mismatch measured between the fixed cowl and lower cowl door is greater than 4.5 mm, prior to further flight, perform a one-time inspection to measure the mis-engagement between the left and right engine hooks of the fixed cowl door and the clevis fittings of the lower cowl door; in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–71–019, dated March 21, 1996, as revised by Fokker Service Bulletin Change Notification SBF100–71–019/1, dated February 28, 1997.

(1) If the mis-engagement is less than or equal to 6.5 mm, no further action is required by this AD.

(2) If the mis-engagement is greater than 6.5 mm: Within 1 year after measuring the mis-engagement required by this paragraph, modify the mid-clevis fitting on the right and left engine lower cowl door; in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–71–019, dated March 21, 1996, as revised by Fokker Service Bulletin Change Notification SBF100–71–019/1, dated February 28, 1997. After accomplishment of this modification, no further action is required by this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

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

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

(g) The actions shall be done in accordance with Fokker Service Bulletin SBF 100–71–019, dated March 21, 1996, as revised by Fokker Service Bulletin Change Notification SBF 100–71–019/1, dated February 28, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 4:** The subject of this AD is addressed in Dutch airworthiness directive 1989–049/3 (A), dated June 28, 1996.

(h) This amendment becomes effective on February 20, 1998.

Issued in Renton, Washington, on January 7, 1998.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 98–822 Filed 1–15–98; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 97–ACE–30]**

## Amendment to Class E Airspace; Audubon, IA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This action amends the Class E airspace area at Audubon County Airport. The FAA has developed a Global Positioning System (GPS) Runway (RWY) 32 Standard Instrument Approach Procedure (SIAP) to serve the Audubon County Airport. Additional controlled airspace 700 feet Above Ground Level (AGL) is needed to accommodate this SIAP. The enlarged area will contain the new GPS RWY 32 SIAP in controlled airspace at and above 700 feet AGL in order to contain the new SIAP within controlled airspace. The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the GPS RWY 32 SIAP.

**DATES:** Effective date: 0901 UTC, April 23, 1998.

Comments for inclusion in the Rules Docket must be received on or before February 17, 1998.

**ADDRESSES:** Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 97–ACE–30, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

**FOR FURTHER INFORMATION CONTACT:** Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

**SUPPLEMENTARY INFORMATION:** The FAA has developed a GPS RWY 32 SIAP to serve the Audubon County Airport, Audubon, IA. The amendment to Class E airspace at Audubon, IA, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAP within controlled airspace. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

### The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is

issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

### Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, 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 should 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 or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, aeronautical, environmental, and energy-related 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 action 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 No. 97–ACE–30.'' The postcard will be date stamped and returned to the commenter.

### Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

### § 71.1 [Amended]

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

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

* * * * *

**ACE IA E5 Audubon, IA [Revised]**

Audubon County Airport, IA
(lat. 41°42′05″N., long. 95°55′14″W.)
Audubon NDB
(lat. 41°41′25″N., long. 94°54′36″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Audubon County Airport and within 2.6-miles each side of the 146° bearing from the Audubon NDB extending from the 6.4-mile radius to 7 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on October 24, 1997.

**Herman J. Lyons, Jr.,**

*Manager, Air Traffic Division, Central Region.*

[FR Doc. 98–1105 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 97–ACE–11]**

## Amendment to Class E Airspace; Lee's Summit, MO

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This notice confirms the effective date of a direct final rule which revises Class E airspace at Lee's Summit, MO.

**EFFECTIVE DATE:** The direct final rule published at 62 FR 53740 is effective on 0901 UTC February 26, 1998.

**FOR FURTHER INFORMATION CONTACT:** Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on October 16, 1997 (62 FR 53740). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective

February 26, 1998. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on November 20, 1997.

**Christopher R. Blum,**

*Acting Manager, Air Traffic Division Central Region.*

[FR Doc. 98–1102 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 97–ACE–24]**

## Amendment to Class E Airspace; Lincoln, NE

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This action amends the Class E airspace area at Lincoln Municipal Airport, Lincoln, NE. A review of the airspace for Lincoln Municipal Airport indicates it does not meet the criteria for 700 feet Above Ground Level (AGL) Class E airspace as required in FAA Order 7400.2D. The area has been enlarged to conform to the criteria of FAA Order 7400.2D. The intended effect of this rule is to comply with the criteria of FAA Order 7400.2D, and to provide additional Class E airspace for instrument operations.

**DATES:** Effective date: 0901 UTC, April 23, 1998.

*Comment date:* Comments must be received on or before February 17, 1998.

**ADDRESSES:** Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Airspace Docket Number 97–ACE–24, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

**FOR FURTHER INFORMATION CONTACT:** Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone (816) 426–3408.

**SUPPLEMENTARY INFORMATION:** A review of the airspace for Lincoln Municipal Airport indicates it does not meet the criteria for 700 feet AGL Class E airspace as required in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile, plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile increment. The amendment to Class E airspace at Lincoln, NE, will comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

### The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

### Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, 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 should 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 or withdrawn in light of the comments received. Factual information that support the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory aeronautical economic, environmental, and energy-related 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 action 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 Airspace Docket No. 97–ACE–24.'' The postcard will be date stamped and returned to the commenter.

### Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

**§ 71.1 [Amended]**

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

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

* * * * *

**ACE NE E5, Lincoln, NE [Revised]**

Lincoln Municipal Airport, NE
(lat. 40°51′03″N., long. 96°45′33″W.
Lincoln VORTAC
(lat. 40°55′26′N., long. 96°44′31′W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of the Lincoln Municipal Airport and within 3.9 miles each side of the 014° radial of the Lincoln VORTAC extending from the 7.4-mile radius to 10 miles north of the VORTAC and within 6 miles each and 4 miles west of the Lincoln ILS localizer course extending from the 7.4-mile radius to 18 miles south of the airport and within 4 miles east and 6 miles west of the Lincoln ILS localizer course extending from the 7.4-mile radius to 14.7 miles north of the airport, excluding that airspace within the Lincoln Municipal Airport, NE, Class C airspace area.

* * * * *

Issued in Kansas City, MO, on October 27, 1997.

**Hermon J. Lyons, Jr.,**

*Manager, Air Traffic Division, Central Region.*

[FR Doc. 98–1104 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 97–ACE–13]**

## Amendment to Class E Airspace; Vinton, IA

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This notice confirms the effective date of a direct final rule which revises Class E airspace at Vinton, IA.

**EFFECTIVE DATE:** The direct final rule published at 62 FR 53946 is effective on 0901 UTC February 26, 1998.

**FOR FURTHER INFORMATION CONTACT:** Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on October 17, 1997 (62 FR 53946). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 26, 1998. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on November 20, 1997.

**Christopher R. Blum,**

*Acting Manager, Air Traffic Division, Central Region.*

[FR Doc. 98–1101 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 97–ACE–10]**

## Amendment to Class E Airspace; Kansas City, Richards-Gebaur Airport, MO

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This notice confirms the effective date of a direct final rule which revises Class E airspace at Kansas City, Richards-Gebaur Airport, MO.

**EFFECTIVE DATE:** The direct final rule published at 62 FR 53944 is effective on 0901 UTC February 26, 1998.

**FOR FURTHER INFORMATION CONTACT:** Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on October 17, 1997 (62 FR 53944). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 26, 1998. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on November 20, 1997.

**Christopher R. Blum,**

*Acting Manager, Air Traffic Division, Central Region.*

[FR Doc. 98–1100 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 29107; Amdt. No. 1845]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of

new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

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

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

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

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase—*

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription—*

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

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

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

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

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with a Global Positioning System (GPS) and or Flight Management System (FMS) equipment. In consideration of the above, the applicable SIAP's will be altered to include ''or GPS or FMS'' in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS or FMS procedure is developed, the procedure title will be altered to remove ''or GPS or FMS'' from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as ''RNAV'' will be redesignated as ''VOR/DME RNAV'' without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 years.

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

## List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on January 9, 1998.

**Quentin J. Smith, Jr.,**

*Acting Director, Flight Standards Service.*

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

### §§ 97.23, 97.27, 97.33 and 97.35 [Amended]

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified:

*Effective On Publication*

New York, NY, John F. Kennedy Intl, VOR or GPS RWY 13L/13R, Amdt 18 CANCELLED

New York, NY, John F. Kennedy Intl, VOR or FMS or GPS RWY 13L/13R, Amdt 18

[FR Doc. 98–1097 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–13–M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 97**

**[Docket No. 29115; Amdt. No. 1847]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

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

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

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

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

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase—*

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription—*

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

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

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

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

### The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

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

### Conclusion

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

### List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on January 9, 1998.

**Quentin J. Smith, Jr.,**

*Acting Director, Flight Standards Service.*

### Adoption of the Amendment

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

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

**Authority:** 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

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

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

. . . Effective upon publication

| FDC Date | State | City | Airport | FDC Number | SIAP |
|---|---|---|---|---|---|
| 01/01/98 | AK | Huslia | Huslia | FDC 8/0032 | VOR/DME Rwy 21, Orig. |
| 01/01/98 | AK | Huslia | Huslia | FDC 8/0033 | VOR/DME Rwy 3, Orig. |
| 01/01/98 | CA | Los Angeles | Los Angeles Intl | FDC 8/0008 | ILS Rwy 25R. |
| 01/01/98 | CA | Modesto | Modesto City-County Arpt—Harry Sham Field. | FDC 8/0011 | GPS Rwy 28R Orig. |
| 01/01/98 | MO | St Louis | Lambert-St Louis Intl | FDC 8/0031 | ILS Rwy 6, Orig. |
| 01/01/98 | NY | Syracuse | Syracuse Hancock Intl | FDC 8/0017 | VOR or TACAN Rwy 32 Orig |
| 01/07/98 | NY | Weedsport | Whitfords | FDC 8/0217 | VOR–A Orig |
| 12/09/97 | OH | Marion | Marion Muni | FDC 7/8055 | VOR or GPS–A, Orig. |
| 12/22/97 | OH | Millersburg | Holmes County | FDC 7/8348 | NDB or GPS Rwy 27, Amdt 5. |
| 12/22/97 | OH | Millersburg | Holmes County | FDC 7/8349 | VOR or GPS–A, Amdt 6. |
| 12/23/97 | SD | Aberdeen | Aberdeen Regional | FDC 7/8364 | ILS Rwy 31, Amdt 12A. |
| 12/23/97 | SD | Aberdeen | Aberdeen Regional | FDC 7/8365 | NDB Rwy 31, Amdt 9A. |
| 12/23/97 | SD | Aberdeen | Aberdeen Regional | FDC 7/8366 | LOC/DME BC Rwy 13, Amdt 9A. |
| 12/23/97 | SD | Aberdeen | Aberdeen Regional | FDC 7/8367 | VOR/DME or GPS Rwy 13, Amdt 11A. |
| 12/23/97 | SD | Aberdeen | Aberdeen Regional | FDC 7/8368 | VOR or GPS Rwy 31, Amdt 19A. |
| 12/23/97 | SD | Brookings | Brookings Muni | FDC 7/8362 | ILS/DME Rwy 30, Amdt 1. |
| 12/23/97 | SD | Mitchell | Mitchell Muni | FDC 7/8363 | ILS/DME Rwy 30, Amdt 2. |
| 12/30/97 | VT | Burlington | Burlington Intl | FDC 7/8471 | ILS/DME Rwy 33 Orig. |

[FR Doc. 98–1099 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 29114; Amdt. No. 1846]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

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

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

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

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

*For Examination—*

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

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

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

*For Purchase—*

Individual SIAP copies may be obtained from:

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

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

*By Subscription—*

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

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

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

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials.

Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

## The Rule

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

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

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

## List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on January 9, 1998.

**Quentin J. Smith, Jr.,**

*Acting Director, Flight Standards Service.*

## Adoption of the Amendment

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

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

### §§ 97.23, 97.25, 97.27, 97.29, 97.31. 97.33 and 97.35 Amended

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

*...Effective January 29, 1998*

New York, NY, John F. Kennedy Intl, ILS RWY 4L, Amdt 9

*...Effective February 26, 1998*

Ames, IA, Ames Muni, GPS RWY 13, Orig
Ames, IA, Ames Muni, GPS RWY 19, Orig
Plymouth, MA, Plymouth Muni, GPS RWY 6, Amdt 2
Worcester, MA, Worcester Regional, GPS RWY 29, Orig
Morris, MN, Morris Muni, GPS RWY 32, Orig
Lebanon, NH, Lebanon Muni, ILS RWY 18, Amdt 4
Manville, NJ, Central Jersey Regional, VOR OR GPS–A, Amdt 6
Manville, NJ, Central Jersey Regional GPS RWY 7, Orig
Newark, NJ, Newark Intl, ILS RWY 4R, Amdt 10
Fredricksburg, VA, Shannon, NDB RWY 24, Amdt 2
Fredricksburg, VA, Shannon, GPS RWY 24, Orig
Appleton, WI, Outagamie County, NDB RWY 29, Amdt 1
Appleton, WI, Outagamie County, ILS RWY 29, Amdt 2
Wisconsin Rapids, WI, Alexander Field South Wood County, GPS RWY 20, Orig

**Note:** The following Standard Instrument Approach Procedures (SIAPs) published in TL 98–01 effective February 26, 1998, have been rescinded:

Yuma, AZ, Yuma MCAS-YUMA Intl, GPS RWY 17 Orig
Yuma, AZ, Yuma MCAS-Yuma Intl, GPS RWY 21R, Orig

*...Effective April 23, 1998*

Ashland, OH, Ashland County, VOR OR GPS-A, Amdt 8
Ashland, OH, Ashland County, NDB OR GPS RWY 18, Amdt 10
Georgetown, OH, Brown County, GPS RWY 35, Orig
Wilmington, OH, Airborne Airpark, ILS RWY 4L, Amdt 4
Wilmington, OH, Airborne Airpark, ILS/DME RWY 4R, Amdt 1A, CANCELLED
Wilmington, OH, Airborne Airpark, ILS RWY 4R, Orig
Wilmington, OH, Airborne Airpark, ILS/DME RWY 22L, Amdt 1, CANCELLED
Wilmington, OH, Airborne Airpark, ILS RWY 22L, Orig
Rice Lake, WI, Rice Lake Regional-Carl's Field, VOR RWY 1, Orig

[FR Doc, 98–1098 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## 30 CFR Part 203

**RIN 1010–AC13**

## Royalty Relief for Producing Leases and Certain Existing Leases In Deep Water

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes conditions for reducing royalties on producing leases; provides for suspension of royalty payments on certain deep water leases issued as the result of lease sales held before November 28, 1995; and describes the information required for a complete application for royalty relief.

**EFFECTIVE DATE:** This rule is effective February 17, 1998. However, the information collection requirements contained in § 203.61 will not become effective until approved by the Office of Management (OMB). MMS will publish

a document at that time announcing the effective date.

**FOR FURTHER INFORMATION CONTACT:** Dr. Marshall Rose, Chief, Economics Division, at (703) 787–1536.

**SUPPLEMENTARY INFORMATION:**

## I. Objectives of Royalty Relief

Royalty relief can lead to increased development and production of natural gas and oil, creating profits for lessees and royalty and tax revenues for the government that it might not otherwise receive. This rule establishes economic incentives that encourage Outer Continental Shelf (OCS) lessees to spend or invest the money needed to promote development and encourage increased production. For all Federal offshore planning areas, we may provide enough relief to allow a reasonable operating profit if expenses plus royalties are approaching revenues. For cases in certain deep water (water at least 200 meters deep) planning areas of the Gulf of Mexico (GOM), we may suspend royalty payments to permit lessees to earn a reasonable return on their capital investments.

The Secretary of the Interior (Secretary) carries out royalty relief as part of his stewardship and sound management of public lands. This includes conserving resources, getting a fair return to the public on OCS resources, and ensuring all OCS development is safe and consistent with sound environmental standards.

## II. Legislative Background

The Secretary has broad legislative authority to reduce royalty rates on OCS leases. Section 8(a)(3)(A)of the Outer Continental Shelf Lands Act (OCSLA), as amended (43 U.S.C. 1337(a)(3)(A)), gives the Secretary authority to reduce royalties on leases in order to increase production. Relief must be justified and granted case by case.

On November 28, 1995, President Clinton signed Public Law 104–58, which included the Deep Water Royalty Relief Act (DWRRA). Section 302 of the DWRRA amends section 8(a) of the OCSLA (43 U.S.C. 1337(a)(3)(B)) authority so the Secretary may grant relief on a producing or non-producing lease, or category of leases. Its purpose is to promote development or increased production, or to encourage production of marginal resources, for GOM leases lying west of 87 degrees, 30 minutes West longitude.

The DWRRA also covers leases issued in water depths greater than 200 meters (deep water) as a result of sales held before the DWRRA's enactment. Section 302 of the DWRRA singles out ''new production'', from a lease or unit existing on the date of its enactment and in the GOM's deep water west of 87 degrees, 30 minutes West longitude. The amended OCSLA (43 U.S.C. 1337(a)(3)(C)) says this new production doesn't qualify for royalty suspension if the Secretary determines that this new production would be economic without royalty relief. Otherwise, the Secretary must determine for each case how much production to exclude from royalty in order to make the new production economic.

Existing leases or units having no royalty-bearing production, other than test production, before November 28, 1995, and qualified for relief under Section 302, need not pay royalties from a field on the first:

- 17.5 million barrels of oil equivalent (MMBOE) for leases in fields in 200 to 400 meters of water,
- 52.5 MMBOE for leases in fields in 400 to 800 meters of water, and
- 87.5 MMBOE for leases in fields in more than 800 meters of water.

These leases or units may qualify for a larger suspension volume if this specified volume wouldn't make the field economic.

Under § 8(a) of the OCSLA as amended by § 302 of the DWRRA, we may also grant a royalty-suspension volume for production from lease development involving a substantial capital investment (e.g., fixed-leg platform, subsea template and manifold, tension-leg platform, multiple well projects, etc.) proposed in a Development Operations Coordination Document (DOCD), or a supplement to an approved DOCD, approved by the Secretary after November 28, 1995. This type of relief is available to leases that produced before November 28, 1995. In this case, we'll grant the suspension volume we determine necessary to make the new production economic.

We issued the Interim Rule for Royalty Relief for Producing Leases and Certain Existing Leases in Deep Water on May 31, 1996 (61 FR 27263). We asked for comments, received many, and are now issuing a final rule.

## III. Response to Comments

Fifteen respondents—the American Petroleum Institute (API), the National Ocean Industries Association (NOIA), the Independent Petroleum Association of America (IPAA), and 12 oil and gas companies—submitted comments on the Interim Rule and the supplementary guidelines. We analyzed all comments and sometimes revised the final language based on them. We first address the general concern expressed about the Net Revenue Share (NRS) royalty relief system, followed by the three main themes raised in the comments on the Deep Water royalty relief system. Finally, we provide responses to the other individual comments and answer questions relating to selected provisions retained from the Interim Rule.

*Comment on Utility of NRS Relief*

*Comment:* The regulations dealing with NRS leases will be of little or no utility. Regarding leases with inadequate revenues to sustain production, the qualifying requirement stipulating that royalty payments must be at least 75 percent of net revenues over the most recent 12-month period is unrealistic and too stringent (§§ 203.50, 52 and 53).

*Response:* We've chosen to keep the two principal features of the proposed NRS system. These are a qualification requirement based on a 75 percent royalty share of net revenue and a feature whereby the average lease rate gradually rises back to the pre-relief level when production made possible by the relief rises sufficiently. However, we've made changes in this form of relief that will make it easier to implement and operate under the NRS system. These changes will reduce the application burden, simplify the qualification requirements, and modify the operational framework.

We proposed the NRS system to implement the OCS Lands Act (43 U.S.C. 1337(a)(3)(A)) authority to offer royalty relief to a producing lease to promote increased production. We specified different qualification conditions for two situations: end-of-life leases with inadequate revenues to sustain production and marginally economic projects to expand production. We've decided to no longer offer a separate form of royalty relief for expansion projects, because lessees with such projects should generally prefer applying for, and operating under, the revised end-of-life relief system in this final rule. Also, by dropping project relief we've simplified the program by eliminating the need for the applicant to show that production would be economic only with relief and that the project would add at least 1 year's worth of production. To emphasize this narrower scope and avoid confusion with an NRS system that has been generally avoided by industry, we've adopted the new name ''end-of-life relief.'' However, we have retained the underlying conceptual framework of the proposed NRS system in the new end-of-life royalty relief system.

For end-of-life situations, the interim rule required a demonstration that

royalties were taking 75 percent of net revenues and were projected to take an increasing share in the future. We designed these stipulations to fulfill the ''increase production'' condition in the statute. However, we now believe that the increasing share requirement added little to the assurance that royalty relief would result in increased production. Also, it was burdensome and placed us in a position of relying unnecessarily on projections made by the applicant. Accordingly, we've dropped the increasing share condition.

Moreover, we've reduced the extent of information that must be submitted in an application. Instead of 36 months of cost history and 12 months of prospective data, under the new end-of-life system, applicants provide cost and production for the 12 out of the past most recent 15 months that have average daily production of at least 100 barrels of oil equivalent (BOE). Note the 100 BOE per day threshold applies to whole leases, not individual wells. The 12 out of 15 months provision protects producers from being disqualified by temporary shut down events like well work-overs, and it mitigates misrepresentations due to seasonal variation. The 100 BOE average daily production requirement gives us more assurance than the previous proposed ''increasing share'' requirement of the interim rule that relief would make the increased production economic. We believe that leases with production smaller than 100 BOE cannot cover platform operating costs and that they likely continue to operate for reasons beyond those that royalty relief would affect. That is, while royalty relief may reduce losses for under 100 BOE/day operators, it will not increase production from them.

The proposed NRS relief system took 50 percent of increases or decreases in net revenue, regardless of the cause. We designed this feature to allow the public to share automatically in unforeseen expansions of production, price increases, or cost decreases while cushioning lessee losses from unforeseen deterioration in these factors. The absence of applications suggests to us that these advantages were outweighed by a perception that the NRS system imposed on lessees a heavy and ongoing data collection burden and extracted from them too much of their upside profit potential.

Fortunately, we've found that a simpler and less burdensome royalty system can approximate the sliding rate structure of the NRS system. Therefore, we've replaced the NRS terms, which typically included a 50 percent rate over any possible level of production, with a 2-tier royalty rate. We give you relief with a rate fixed at one-half the pre-relief rate for a specific monthly amount of production followed by an incremental rate fixed at 50 percent above the pre-relief rate for production above that monthly amount. We added other features to balance the end-of-life system. Features that encourage lessees include a cap on the average royalty rate at the pre-relief rate and a lessee option to end relief at any time. Features that protect public interest include lifting of relief during periods of very high prices, an eventual end of relief if prices or production, or both, remain high for an extended period, and a provision allowing us to identify conditions in individual cases which would lead to terminating the relief arrangement because those conditions are inconsistent with an end-of-life situation.

*Main Themes in Comments on the Deep Water Interim Rule*

1. Qualification Circumstances

*Comment:* The current interim rule is too complex. As an alternative, API, NOIA, and IPAA suggest setting minimum economic field sizes (MEFS) by water depth and development system that automatically qualify fields for royalty relief (§ 203.67).

*Response:* Automatic MEFS are too impractical and difficult to develop and maintain. So, we won't use them to decide if a field qualifies for the amount of royalty relief the DWRRA specifies.

We estimate that calculating an MEFS requires values for more than 90 parameters, such as price, quality, water and drilling depth, gas-to-oil ratio, production rates, and scheduling of costs and production. We'd need to calculate many MEFS and would have to update them regularly as prices, costs and other significant values change. With large amounts of relief and rapidly changing values, and given the nearly explicit statutory mandate to provide sufficient relief, but not too much, we'd have to carefully set the qualifying field sizes. As a result, we'd not be able to set MEFS at sizes that would be worth developing even with royalty relief.

In contrast, the potential number of non-producing leases that may come in for relief looks relatively small. These are pre-Act leases, formerly pre-enactment deep water leases, or PDWLs. We can now identify fewer than 75 fields in this category, a small fraction of which may need relief. More importantly, we can't justify relying on generic data to determine an MEFS when an application gives us specific data for each field.

2. Early Relief Indication

*Comment:* MMS requires that a DOCD be approved before an applicant can submit a complete application for royalty relief on a pre-Act lease. Unfortunately, that pushes the request for royalty relief too late into development to be useful. Lessees won't prepare expensive DOCDs for projects that might not go into production, so they want some assurance royalty relief will be granted before preparing one (§ 203.83).

Rather than require an approved DOCD before submission of an application, break approval into two phases. In phase one, an applicant would file a preliminary application early in the life of a project based on the best information available at the time but with significantly less data than required in a final application. Based on a less extensive review than required for a final application, MMS would give a preliminary finding about whether the project qualified for relief and the appropriate suspension volume. Unless there were material changes, the preliminary finding would be binding. In phase two, a final application would either confirm the relief or cause MMS to do a new evaluation because of material changes (§ 203.61).

*Response:* We agree that the DOCD requirement is unnecessarily restrictive and have removed it in the final rule. Instead, we'll depend on other means to ensure appraisals are complete enough for the applicant to make an informed decision to develop and for us to evaluate the need for royalty relief. We will:

- Shorten the period allowed from 2 years to 1 year between the approval of relief and the start of construction on the development and production system,
- Allow significant new geological and geophysical (G&G) data to qualify only for the initial redetermination, and
- Use our own professional judgment on whether the appraisal is sufficient for decision making.

Breaking the approval into two phases as proposed by industry comments has a number of flaws. MMS would have to make a conditionally binding relief decision in phase one with less data and certainty than the company would have when it decides whether to develop after phase two. Foregoing Federal property rights to royalty income under the existing lease contract without sufficient information would be too arbitrary. Also, our conditional approval may discourage an applicant from developing more information that might

change the preliminary finding, before filing a phase two application.

We've changed the rule to fit industry's request for an assessment of relief early in the project. In certain circumstances, a lessee or operator may request a nonbinding assessment of whether a field would qualify for royalty relief before submitting the first complete application on a field. This option will help those who don't want to risk having to meet qualifications for a redetermination if we reject a complete application, but want to know early about the chances for royalty relief on a marginal prospect.

The request would involve a draft application plus a processing fee. It could come any time after discovery (after a well qualifies under 30 CFR 250.11 or production is allocated under an approved unit agreement). The detail must be comparable to a complete application to ensure we assess the same prospect the lessee or operator envisions. We would develop a nonbinding assessment presuming that continued appraisal would produce expected values for unknown, but essential, data. Therefore, applicants must also send in an appraisal plan to drill one or more wells should MMS issue a favorable nonbinding assessment. After at least 90 days, a final, complete application can confirm or revise the data in the draft application and present the applicant's binding proposal as a condition for receiving royalty relief.

3. Complexity of Methods and Data Requirements

*Comment:* MMS proposes to use Monte Carlo simulations to account for the uncertainty in application data. Probability distributions in Monte Carlo techniques may be appropriate to analyze exploration and evaluate the adequacy of lease sale bids for which most data are unavailable and estimated. However, these approaches are less appropriate to analyze development. After discovering hydrocarbons, drilling delineation wells and taking seismic readings, the data are much more certain. Companies typically use simple scenario modeling and sensitivity analyses on development projects. MMS should adopt the scenario approach most used by industry (§§ 203.85–89).

*Response:* We've kept the Monte Carlo methods, though somewhat simplified, for several reasons. No clear milestones show when appraisal or delineation is adequate for making the development decision, so scenario modeling would not be suitable for many applications. Also, we must systematically handle the uncertainty associated with applications to be submitted at an early stage of development and we've been given a mandate to deal with the extra risk deep water poses. The Monte Carlo approach handles these diverse situations and requirements by allowing for the incorporation of as much or as little risk as perceived, a full range of sensitivity analysis, and the small but positive chance for all the circumstances an operation needs to become highly profitable.

We differ from the scenario approach industry describes mainly in the way we estimate reserves. The scenario approach offers no systematic way to arrive at a reserve size and chance of occurrence. We use careful descriptions of reservoirs and a standard procedure for calculating resources and aggregating them to the field level. Generally, we have adopted the reserves and resource definitions of the Society of Petroleum Engineers. This standardized procedure treats all applicants alike. It keeps our evaluators from having to learn the subtleties of each applicant's definition of reserves in order to verify and perhaps change that part of the evaluation. The level of detail proposed will ensure that we apply a consistent, analytically supportable method, especially for estimating producible reserves and resources.

The G&G report requests measurable reservoir data to help us validate inputs to the evaluation model. Distributions for all data items provide a way to document the uncertainty about these factors, but we don't need estimates for all data items because the model combines some items and derives other inputs. We've tried to clarify and simplify the data requirements in the spirit of the ''scenario'' approach.

Under our Monte Carlo procedure, applicants may use up to three discrete development scenarios, and they may include ranges for many of their variables. We need this detail so we can clearly understand the options and uncertainties an applicant faces. Our model has a less complex structure than publicly available models for estimating reserves and evaluating economics.

*Individual Comments on the Deep Water Interim Rule and Guidelines*

The following tables respond to the comments we received on the interim rule and supplementary guidelines. Each row references appropriate sections in the final rule and subject areas in the interim rule that relate to that comment and response.

COMMENT ON GENERAL PROVISIONS

| Requirement/Subject | Comment | MMS Response |
|---|---|---|
| 203.3/Processing Fees | The fees for royalty relief are too high and more than cover the costs of processing and deterring nuisance applications. Applicants should get refunds if fees are more than actual processing costs, which could be the case if screens for minimum field size are used to approve relief. | We estimate fees based on how many hours of work we expect the average application to take. After we have more experience with applications, we'll review processing costs and adjust fees if necessary. We plan to give refunds only for incomplete applications. But, we won't charge more when processing costs exceed the established fees. |

COMMENTS ON NET REVENUE SHARE (NRS) ROYALTY RELIEF

| Requirement/Subject | Comment | MMS Response |
|---|---|---|
| 203.52/NRS Relief—Approval Criteria for Multiple-field Leases | If a lease produces from two or more fields, one or more of which do not qualify for NRS relief, royalty relief should still be possible for the lease production which would otherwise qualify. | Relief for end-of-life cases is designed for and granted to a whole lease or unit, not to a project or field. If a lease as a whole qualifies for end-of-life relief, it gets it regardless of how many fields are involved. |

COMMENTS ON NET REVENUE SHARE (NRS) ROYALTY RELIEF—Continued

| Requirement/Subject | Comment | MMS Response |
|---|---|---|
| Guidelines—Supplementing 203.53/Relief Operation | Requiring the operator to act as a single payor could not have been anticipated at the time the producer agreed to become the operator and exposes the operator to unforeseen legal implications or burdens. Getting money and accurate information to pay and report royalties from other lease owners is difficult, if not impossible, and could obligate the operator for late or improper payment and reporting interest and penalties. | Agree. We've dropped this requirement. It was proposed because the scope of an audit for a lease receiving royalty relief is greater than for normal leases. A single payor is designated to keep our audit expenses reasonable wherever multiple lease owners enjoy relief. However, the Royalty Simplification and Fairness Act contains language which precludes our insistence on a single payor. |
| 203.56/NRS Relief—Lease Transfers or Assignments | If a lease is assigned, the NRS terms should be transferred to the assignee upon request. If the assignee doesn't ask to retain NRS terms, the lease should revert to the standard lease royalty rate. | In concept, relief is granted to a lease or unit, not to a lessee. We've changed the rule to automatically transfer relief terms to the assignee. Lessees also have the option to end relief at anytime. |

COMMENTS ON DEEP WATER ROYALTY RELIEF (DWRR)

| Requirement/Subject | Comment | MMS Response |
|---|---|---|
| 203.60 & 78/Field Definition Decision Level & Appeals. | MMS should elevate the level for field definition decisions, notify lessees of the field designations, and allow them to object. It should also extend the period for appealing a field decision from 15 to 30–60 days. And it should allow companies to review current field designations for the GOM and industry input in any revisions | Agree in part. The Chief, Reserves Section, Office of Resource Evaluation, GOM Region (GOMR), will make field decisions after a lease has been qualified as producible. As part of that process, affected lessees and operators will be able to review and discuss any data with us before we make the final field decision. We won't extend the formal appeal period after this decision. Until the GOMR issues a final decision on the field designation, lessees of a pre-Act lease can't apply for DWRR. However, a DWRR application based on the GOM Regions' final field designation decision can be filed and processed while the field designation is under appeal. |
| 203.60/Field Concept and Designation—Methodology. | Industry is accustomed to delineating a field for reasons of infrastructure, not geology, so disagreements over ''field'' designation can be expected. Recommend that MMS make public the methods it uses to identify fields and work with industry to develop a more precise definition for ''field.'' | Agree. The term ''field'' in geological and petroleum literature is usually defined relative to geologic structure or stratigraphic conditions. The *Field Naming Handbook,* already available on the INTERNET from the GOMR, explains our methods. The GOMR will gladly entertain suggestions for improvements. Meetings on a field designation before starting the completeness review can improve understanding. But the basic entity for relief on royalties in deep water is the geologic field, not the project. |
| Deep Water Guidelines Supplementing 203.62/ Applications—Informal Consulting. | Will MMS answer questions on preparing an application before it is filed and a fee paid? | Yes. As the revised guidelines state, we'll informally advise you how to fill out an application, but not whether to file one. Given the extensive guidelines and model documentation, informal advice can save you time before filing and us time during the completeness review and evaluation. |
| 203.62 & 65(f)/Applications & Revising Applicants' Assumptions. | The economic, geologic, and engineering reports are too complicated, voluminous, and costly for marginal opportunities that depend on royalty relief. But MMS should not revise any assumptions without consulting the applicant and, if necessary, letting a third party settle disputes. At the very least MMS should justify any revisions to an applicant's assumptions | Agree in part. Application requirements impose a small cost in comparison to the size of the royalty relief at stake. We'll use our judgment and discretion in deciding whether to ask an applicant for more information or for clarification before making any changes, tolling the clock as needed to complete a full evaluation.<br>We also will identify changes in related variables that may need to be discussed. Where major assumptions are unsupported by backup or important data elements are inconsistent with other parts of the application, we'll fully explain the source of the problem and provide a chance to explain or resolve the outstanding issues before deciding on an application. We aren't planning to use third parties to resolve disputes. |
| 203.63/Applications—Joint Application Difficulties. | Industry is pleased that DWRR doesn't mandate unitization. However, joint applications may be unworkable due to different reserve numbers, costs, etc., estimated by different lessees | If lessees want DWRR, they will have to at least design applications jointly and, if approved, make sure they meet performance conditions for retaining relief. In cases where a party refuses to cooperate in submitting a joint application, it won't be eligible to receive any relief granted, and we'll likely need to make assumptions about how it might have participated in and contributed to joint development of the field. |

COMMENTS ON DEEP WATER ROYALTY RELIEF (DWRR)—Continued

| Requirement/Subject | Comment | MMS Response |
|---|---|---|
| 203.63/Applications—Joint Application Coercion. | MMS shouldn't require lessees that share the same geologic structure to file joint applications because this requirement could inhibit applications or restrict how companies operate offshore. For instance, on multi-lease fields, an economic project might negate another's less robust project; or a more advanced project may refuse to co-operate with a competitive, but lagging, project, etc | Joint applications don't require joint development, but they are an inescapable feature of a field-based system. The rules allow good-cause exceptions to joint applications. Should other lessees on the field choose not to apply for relief, they're still free to develop their leases as they wish, but they won't share any relief granted. |
| 203.64/Applications with Assignments. | A limit of one application per field restricts a company from seeking relief on a farmed-out lease if the prior owner applied for relief on that field and was rejected. The new company that thinks it could develop the field with royalty relief must qualify for a redetermination to apply | The limit is intended in part to close the potential loophole of assigning leases to get around requirements for redetermination. |
| 203.65/Review and Evaluation—Notification of MMS Determinations. | MMS should notify all affected lessees when royalty relief is granted and publish when, who, and how much relief is given | Agree. We will notify all designated lease operators within a field when royalty relief is granted. The basic summary information will be published on MMS's and GOMR's home pages on the INTERNET. |
| 203.65/Review and Evaluation—Determination Period. | MMS's determination review is too long and will delay field development because lessees can't invest without knowing whether royalty relief will be available. Reduce the review time to 3 months | Public law sets the allowed review periods. However, we don't plan to use the entire time if we can do determinations faster. Yet careful review often requires time, especially when new and complex developments are proposed and huge amounts ($100 million plus) of royalty relief and taxpayer assets are at stake. |
| 203.65/Review and Evaluation—Tolling the Clock—Measurement. | The clock should be tolled by using one measure of time, either work days or calendar days | DWRRA stipulated calendar days for its deadlines of 120 or 180 days for approval or rejection. We'll continue to use work days for reviewing applications for completeness because of the short time allowed. MMS must review each application thoroughly to ascertain whether it is complete before we start the statutory clock in calendar days to analyze economic viability. Industry is accustomed to our using work days to conduct completeness checks for other filings. |
| 203.65/Review and Evaluation—Method for Tolling the Clock. | Evaluation time should be tolled ''upon receipt by the applicant of written notification'' of an information deficiency and the clock should be restarted ''upon receipt of the needed information in the [GOM] Regional MMS office.'' | Agree. As the rule states, the evaluation clock will be stopped when the applicant receives written notice from us and will begin when the requested information is received in the regional office. |
| Deep Water Guidelines Supplementing 203.65/Review and Evaluation—Consistency with Differences in Geologic Interpretation. | How will MMS account for costs and production (revenues) that it believes should be added to the economic evaluation of a field because they are associated with developing reservoirs omitted from an application? | Each application and scenario presents a unique proposal. We'll adjust data as necessary. For example, if we determine that an applicant omitted prospective reservoirs, it's reasonable to assume they'll be found and developed later. By adding the necessary costs after production begins, we avoid the complexity of having to adjust the estimated pre-production costs used as a performance condition. |
| 203.67/Review and Evaluation—Dual Test Role in Evaluation Model (Royalty Suspension Viability Program (RSVP)). | Eliminate the dual test, at least for applicants seeking only the minimum suspension volume. MMS should grant relief and not interject itself into the process by which a lessee decides to develop and incur costs to bring a field into production | We've kept the dual test, but have modified the calculations to reflect industry concerns that our determinations may not always coincide with industry decisions, even using the same input data. If, under these altered conditions, the dual test indicates that no amount of royalty relief will make the field economic, we can reasonably infer that the application is missing some key factor in the decision to develop. |
| 203.68/Review and Evaluation—Dual Test Treatment of Sunk Costs. | Because sunk costs aren't in the dual test, it doesn't prove development is economic without royalty when compared to the way the primary test defines ''economic-ness.'' Treat sunk costs the same in both tests and include them in the volume determination. Chance of relief is lost in a redetermination by defining all of the expended development costs as sunk | The difference in the way the two economic tests treat sunk costs favors the applicant. Omission of sunk costs from the dual test raises the net present value (NPV), improving chances for passing that part of the viability test. Their inclusion in the primary test has the opposite effect on NPV, again improving chances for passing that part of the viability test. As for volume determinations, the DWRRA directs us to consider sunk costs in determining eligibility for relief but not in setting a volume suspension to recover them. Finally, there is no difference in the treatment of sunk costs in the original application and redetermination. The only difference is in timing, i.e., more development costs may have been expended and hence treated as sunk at time of resubmission. That will raise the NPV in the dual test more than it will raise the NPV in the primary test, expanding the range of qualifying values. |

COMMENTS ON DEEP WATER ROYALTY RELIEF (DWRR)—Continued

| Requirement/Subject | Comment | MMS Response |
|---|---|---|
| 203.70 & 91/Review and Evaluation—Post-production development report. | Full development cost is seldom known before first production, so a pre-production report would come before all wells would be drilled. Drilling costs are significant, often around 50 percent. Keep self-disclosure to encourage efficiency and reduce audit requirements but have an updated estimate of development costs provided before the first anniversary of start of production. | We agree that a review before production starts may be premature. The rules require the start-of-production cost report within 60 days after production begins. We may grant short extensions for extenuating circumstances. This gives applicants time to compile data on expenditures up to a well-defined point and avoids the ambiguity surrounding the actual start date and the need to estimate some cost items. |
| 203.70, 76 & 90/Change in Material Fact—Start of Construction. | What constitutes start of construction or fabrication? | The revised rule stipulates the following requirements to verify when construction starts: (1) a copy of the contract with the fabrication yard, (2) a letter from the contractor certifying that construction has started on a specific system for a specific location, and (3) evidence of a payment of appropriate size based on current industry standards for the proposed development and production system. |
| 203.71/Applying Suspension Volumes—Adding leases to a field. | Can a higher minimum suspension volume apply if the MMS evaluation of the application includes potential resources on unleased blocks and or leases not currently assigned to the field? | No. Minimum suspension volumes are based on the deepest lease assigned to the field up to the time the application is approved. Of course, we can still grant larger amounts of relief than the minimum suspension volumes, if we find them necessary to make the whole field economic. |
| 203.73/Applying Suspension Volumes—Gas-to-Oil Conversion Factor. | The fixed conversion factor ignores fluctuations in the relative values of oil and gas and introduces bias as it overvalues gas relative to oil properties at current value ratios. The 8-to-1 ratio implied in the DWRRA may be better than the 5.62-to-1 ratio in the interim rule | The oil/gas ratio will continue to be based on the British thermal unit (Btu) conversion factor. Because the RSVP model values oil and gas separately, the conversion ratio affects only the size of the volume suspension, not qualification for relief. Qualified applicants already get minimum volumes under the DWRRA even if only small volume suspensions are needed. These minimum stipulated volumes were based on our studies using the Btu ratio. Hence, it would be inconsistent to have the volume suspension amounts based on relative prices when the minimum volumes were based on studies using the Btu ratio. |
| 203.74/Redeterminations—Reprocessed Seismic Data. | Conditions for redeterminations should include reprocessed seismic data (using new algorithms). This differs from reinterpreting existing data, which is explicitly excluded as a basis for redetermination | We often can't distinguish a new algorithm from a reinterpretation of an old one, so we'll limit this requirement to new data developed by the applicant as a basis for a redetermination. |
| 203.74/Redeterminations—Price Change Size. | A decline of 25 percent in oil or gas price is much too low to trigger a redetermination. Cash flow is very sensitive to price and a 10 percent drop in price can be enough to trigger a redetermination | Sharp price swings are often short-run phenomena not matched by changes in forecasts of long-term price trends used in a redetermination. Also price/cost differences, not just prices, drive cash flow. Some cost-cutting inevitably accompanies price declines. Only sustained, sizeable price declines, such as 25 percent, are likely to overwhelm cost-cutting opportunities enough to warrant a redetermination. |
| 203.74/Redeterminations—Price Base. | What is the relevant price which must drop by 25 percent to qualify an applicant for a redetermination? | Applicants may seek a redetermination if a weighted 12-month moving average of daily closing New York Mercantile Exchange (NYMEX) prices for oil or gas has decreased by more than 25 percent since the most recent complete application. As the revised rule explains, the before and after prices are weighted using the volumes of oil and gas identified in the most likely scenario described in that application. |
| Deep Water Guidelines Supplementing 203.74/Redeterminations—Price Assumptions. | The minimum oil price of $16.30 per barrel and the average annual growth rate of 1.67 percent is too high for the next 25 years | Starting price assumptions are based on Energy Information Administration (EIA) historical data and growth rates in EIA's *Annual Energy Outlook* and will be updated regularly. To match the GOM market better, we'll use recent prices for Petroleum Administration for Defense District (PADD) III imports as a benchmark for starting prices. Adjustments for gravity differences are allowed. As with all projections, experience may prove starting prices representative or not and growth rates right or wrong. But applicants will be on an equal footing because we mandate specific parameters. |
| Deep Water Guidelines Supplementing 203.76/Changes in Material Fact—Limits. | The guidelines aren't consistent with the interim rule language and preamble discussion regarding ''material change.'' | Agree. We have changed the guidelines to be consistent with the rule. In particular, the four circumstances (change of system, excess delay in starting, underspending on development, or false statements/omitted reports) used to signify a material change are the only ones—not just examples—of what justifies withdrawal of already granted relief. |

COMMENTS ON DEEP WATER ROYALTY RELIEF (DWRR)—Continued

| Requirement/Subject | Comment | MMS Response |
|---|---|---|
| 203.76 & 87–89/Changes in Material Fact & Engineering, Production, and Cost reports—Multiple Development Scenarios. | MMS doesn't need three development scenarios to test viability because the section on withdrawing approval for royalty relief protects against significant changes | The withdrawal conditions focus on underspending development costs and changes in development systems evaluated in the application. They don't consider adjustments to planned capacity before or after production begins. We consider up to three scenarios to reflect uncertainty about final project size, timing, and production rates.<br>We have clarified the options for simplifying the input data. Generally, whenever observed conditions or formal decisions foreclose some or all the uncertainty about particular variables, we accept fewer scenarios or point estimates for reservoirs, costs, and production. |
| 203.76/Change in Material Fact—Reapplication with Sunk Development Costs. | Conversion of proposed development costs to sunk costs in a reapplication compounds the penalty from withdrawal. The reapplication is allowed less cost with which to justify relief | Agree. We'll allow applicants to renounce relief at any point after approval is granted and before production starts. When violation of a withdrawal condition is anticipated, giving up relief early can reduce the share of development costs that get considered as sunk costs in a subsequent application. |
| Deep Water Guidelines Supplementing 203.76 & 89/Change in Material Fact—Defining Development Cost. | What expenditures are included in development costs? | We'll count all eligible expenses planned for the most likely scenario between application and start of production. The spending threshold and any disallowed costs (for uneconomic reservoirs) will be specified in the relief approval. In assessing the economic viability of the subject field, we may remove the cash flows associated with uneconomic reservoirs. |
| Deep Water Guidelines Supplementing 203.76/Change in Material Fact—Development Period. | What happens if the development period (i.e., time to first production) deviates from an applicant's proposal? | We'll compare actual to approved pre-production costs, regardless of how much or little time it takes to start production. |
| 203.76/Only ''Significant'' Change in Material Fact before Withdrawal of Approved Relief. | Withdrawal as a result of actual cost below 80 percent (or 90 percent for redetermination that follows withdrawal of previously granted relief) of application estimates discourages capital efficiency. Also a 10 to 20 percent cost reduction may not greatly improve project economics. MMS should withdraw relief only if reduction in capital costs ''substantially'' improve project economics beyond those on which the project qualified. Even if such a change occurs, the applicant ought to be allowed to appeal to keep relief so as not to encourage inefficient expenditures | Withdrawal conditions need to be fixed and obvious, not flexible combinations to be determined later. We've taken three steps to soften the danger of a fixed threshold. First, the applicant may keep one-half of the relief if we're notified of the shortfall. Second, the withdrawal date is now after production begins. Third, the pre-production period is variable, so we count an applicant's costs over a flexible interval. As a result, it's unlikely that the company would substantially underspend its earlier capital cost projections by the time of review. |
| 203.78/Applying Suspension Volumes—Price Ceilings on Different Products. | Will a market gas price increase that is not accompanied by a rise in oil price trigger a lifting of all the royalty-suspension volume for a field with mostly oil reserves or vice versa? | No. The statute doesn't explicitly answer this question. We've interpreted the applicable text to mean that price ceilings prescribed in the law for lifting relief should apply separately to each product for fields that produce both. Relief can be suspended on just the part of total production from a field whose price exceeded the threshold. Gas prices above $3.50 per million Btus (escalated to then-current dollars) won't lift relief on oil volumes if oil prices remain below $28 per barrel (escalated to then-current dollars) and vice versa. Escalation by the Gross Domestic Price deflator raises the thresholds each year. |
| 203.78/Applying Suspension Volumes—Time Limits for Royalty Refunds or Credits. | A time limit should be set for MMS to make royalty refunds or credits, as are set for companies to repay back royalties with interest, under the price escalation clause | Agree. The new Royalty Simplification and Fairness Act requires that MMS process refunds or credits on production after September 1996 within 120 days of a lessee's request. Future rules will set forth procedures which deal with this request. The repayment period for companies is also set at 120 days. |

COMMENTS ON THE REQUIRED REPORTS

| Requirement/Subject | Comment | MMS Response |
|---|---|---|
| 203.81/Independent Certification. | A certified public accountant (CPA) certification of historical expenditures reported in either the application or the pre-production report imposes unnecessary costs. Internal records and self certification are adequate | A CPA certification is an independent check and so might substitute for our audit. Besides, only eligible expenditures must be certified. However, to reduce the cost of the independent audit, we will accept a CPA opinion which identifies questionable elements or an unqualified opinion on the accuracy and relevance of the historical information presented. |

COMMENTS ON THE REQUIRED REPORTS—Continued

| Requirement/Subject | Comment | MMS Response |
|---|---|---|
| Deep Water Guidelines Supplementing 203.81/ Certification Format. | What is a CPA certification for sunk costs? | It's a CPA report that certifies your historical information is accurate and meets our stipulations on eligibility. As the revised guidelines state, an agent of the CPA firm must sign the certification and identify someone who knows the case and is authorized to respond to questions on it. |
| 203.83/Administrative report—Certification of Non-Development. | Requiring certification that reserves won't be produced without relief is not enforceable and can be outdated as conditions change | Agree. We've eliminated this requirement. Considering sunk costs in the evaluation means that some fields that qualify for relief would be worth developing without relief. |
| 203.85/Economic viability report—Inflation. | The spreadsheet model should allow for cost inflation | Future versions of the spreadsheet model may include a variable to account for cost-specific inflation or deflation. Technological progress could actually lower real costs over time despite general inflation of all prices and costs. |
| 203.85/Economic viability report— Updating Price Assumptions Schedule. | MMS should fix a schedule for revising price assumptions (e.g., quarterly, annually). If MMS issues new assumptions while reviewing an application, they should clarify which assumptions apply (those at time of application or latest issued before the determination) | Agree. We'll publish updated price assumptions on the INTERNET annually, probably in the late spring when EIA's *Annual Energy Outlook* releases new data and forecasts. We'll use the price assumptions in place on the date of application submission. |
| 203.85/Economic viability report—Revising Applicants' Assumptions-Discount Rates. | Will MMS accept the discount rate an applicant selects, or reserve the right to revise the discount rate? | We'll use the discount rate an applicant proposes in both the dual and primary tests, with no appropriateness review as long as it is within the range provided in the guidelines. |
| 203.85/Economic viability report—Discount Rate Size. | The 10 percent discount rate is too low. Even 15 percent is too low because it risks rejected projects being abandoned | In all cases, the rates of return apply to a field with a discovery, so the risk of not finding oil or gas is gone. The range specified in the guidelines for the discount rate is based on recent historical experience, which in future years may assume a different trend. The industry's average after-tax, real rate of return, has been estimated to range from a high of 10.9 percent to a low of 1.4 percent between 1959 and 1988. (See A.T. Guernsey on behalf of Shell Oil Company, *Profitability Study: Crude Oil and Natural Gas Exploration, Development, and Production Activities in the USA, 1959–1988,* November 1990). Simulations with a version of our model found before-tax rates of return ranged from 1.2 to 4 percent higher than after-tax rates of return over various project conditions. Together, these estimates indicate that expecting before-tax discount rates, and hence rates of return, in the range of 10 to 15 percent are appropriate. |
| 203.85/Economic viability report—Discount Rate Range. | Allowing variability in discount rates could lead to unequal treatment. Where applicants choose discount rates, the playing field isn't level. Instead, specify one for each of three water-depth thresholds and apply uniformly | The goal of a range of discount rates is to fit differences in companies' risk tolerance and opportunity cost. Applicants can tailor their risk preferences by water depth within this range if they choose to. We use probability methods that don't require a risk premium in the discount rate. However, a fixed discount rate across fields and companies within a water-depth category places all the burden for dealing with differences in risk on these probability distributions. We believe a better compromise is to give applicants the chance to use both factors to express their risks and uncertainties. Allowing companies to choose a rate for their projects is eminently fair, as long as they stay within our stipulated range and we use it in both economic viability tests. |
| 203.89/Cost report—Sunk Costs Measurement. | The way MMS includes sunk costs doesn't recognize the time value of money, as past expenditures are carried forward without escalation. It's inappropriate to combine after-tax sunk costs with future costs and revenues expressed on a before-tax basis | The DWRRA directs us to consider all exploration, development, and production costs. Because the decision to proceed on a project is independent of sunk costs, the proper treatment of sunk costs for economic viability is to value them as zero. We balance these considerations by carefully defining expenses that constitute sunk costs, then we allow them as a deduction in the primary test and exclude them from the dual test. The after-tax part of sunk costs, like the before-tax size of prospective costs, is what the company still has to recover from the proposed project. |
| 203.89/Sunk Costs—Scope | Sunk costs should include all reasonable post-lease acquisition costs (seismic data costs, overhead expenses, etc.). Extend the definition to include all project costs incurred by the lessee or on behalf of a lessee | We won't consider sunk costs incurred by previous owners of your lease or by third-parties. Also, we won't consider portions of sunk costs on your lease that you incurred prior to when you last bought into your lease. Further, if you have maintained continous ownership but changed the share of the lease you own, we count your sunk costs only in proportion to the share you owned when you incurred these costs. We do this because previous owners and third-parties already have been compensated through market transactions. Also, we do not believe we can really verify the relevance to current development of expenditures by third-parties or previous owners. |

COMMENTS ON THE REQUIRED REPORTS—Continued

| Requirement/Subject | Comment | MMS Response |
|---|---|---|
| 203.91 & 76/Review and Evaluation—Post-production development report. | What must the post-production report contain? What happens if it isn't submitted? | The report must show and compare planned and actual pre-production costs. If you don't submit the report, you'll lose relief, just as you would for providing false historical or intentionally inaccurate information. |

## IV. Recovery of Costs

By Federal policy and law, we'll charge lessees applying for royalty relief under this rule an amount which recovers our cost of processing their applications. The Independent Office Appropriation Act (31 U.S.C. 9701) and OMB Circular A–25 require agencies to recover their costs when they provide services that confer special benefits or privileges to identifiable non-Federal recipients. Processing of applications for royalty relief clearly falls within this mandate. Furthermore, the Omnibus Appropriations Bill (Pub. L. 104–134, 110 Stat. 1321, April 26, 1996) authorizes collecting such fees.

We issued NTL No. 96–3N (signed June 21, 1996), which gives detailed amounts for processing royalty-relief applications and when and how applicants may pay us. Processing applications for royalty relief to increase production will cost $8,000. Complete applications under DWRR will cost either $16,000 to $34,000. Draft applications will cost either $10,500 to $28,500. For some applications, we may need to audit the financial data submitted to determine the proposed development's economics. That would cost up to $37,500. Ordinarily, no refund is given when we reject an application. However, if we reject a deep water application for incompleteness during the first 20 business days after receiving it, we'll refund all but $5,500 of the application fee. We'll revise the Notice to Lessees (NTL) periodically to reflect our cost experience and to provide other information helpful or necessary for administering this program.

Authors: Sam Fraser and Marshall Rose, Economics Division, prepared this document.

## V. Administrative Matters

*Executive Order (E.O.) 12866*

This rule is significant due to novel policy issues arising from legal mandates, and OMB has reviewed this rule. We will make a copy of our determination of the effects of this rule available on request.

In summary, the DWRRA instructs us to grant royalty relief only in situations that are uneconomic at the lease-stipulated royalty rate. Hence, the economic effects can be estimated by the additional royalties that may be collected from fields that would otherwise not be developed until a later time, if at all. We estimated these effects by extrapolating to all known deep water fields the results of detailed analyses of 30 fields in the relevant water depths. MMS's field-based approach generates up to $45 million per year in additional royalty revenue, which is less than the threshold amount of $100 million annually.

The field-based approach provided in this final rule gives a single royalty-suspension volume for each qualifying field. The main alternative approach gives each individual lease or unit a separate royalty-suspension volume, subject to the minimum volumes specified in the DWRRA.

We chose the field-based approach because:

- The DWRRA's primary author stated that he intended the DWRRA to encourage production from new fields without providing any more relief than needed;
- The field-based approach provides a substantial incentive for developing marginal fields in deep water while still ensuring a fair return to the Treasury;
- The minimum suspension volumes specified in the DWRRA were derived from an analysis of fields, not individual leases; and
- This rule needs to be consistent with the rules for royalty suspensions on deep water tracts leased after November 28, 1995, in the same parts of the GOM so that all deep water leases on the OCS receive equitable treatment.

*Regulatory Flexibility Act*

This rule can have a positive economic effect on some small entities. A copy of our analysis of this impact is available on request.

In summary, this rule sets the terms and conditions for granting royalty relief under the provisions of section 8(a)(3)(A) of the OCSLA. These terms reduce costs for end-of-life operations by 6 to 10 percent, more than doubling profits. That should significantly prolong operations on marginally economic leases. We can't estimate the number of leases that may be affected from past experience, because the terms have been changed from those previously available to marginal OCS leases. We estimate that small entity operators account for under 10 percent of production from OCS leases.

This rule also sets terms and conditions for granting royalty-suspension volumes under the DWRRA for certain deep water leases on the OCS in the GOM. These leases were issued as a result of a lease sale held before November 28, 1995. The conditions limit these terms to the rare situations in which royalty costs are the difference between unprofitable and profitable development. One of two applications for deep water relief received under the interim version of this rule was from a small entity.

*Paperwork Reduction Act*

In connection with the interim final rulemaking (IFR) process, we submitted the information collection requirements in 30 CFR 203 to OMB and conducted a full review and comment process for this collection of information. OMB approved the information collection (OMB No. 1010–0071) on October 7, 1996, to expire on October 31, 1999.

Earlier in the preamble we discussed comments received on the information collection aspects of the IFR. Based on experience and the changes made in this rule, we will submit a revised information collection package to OMB for approval 60 days after this rule is published. With this rule, we are starting the 60-day comment period. The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) provides that 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 information collection aspects of this final rule will not take effect until approved by OMB.

We invite the public and other Federal agencies to comment on the collection of information as discussed below. Send comments regarding any aspect of the collection to the Minerals Management Service, Attention: Rules Processing Team, 381 Elden Street, Mail Stop 4020, Herndon, VA 20170. Your comments should be received by March 17, 1998.

We use the information to determine whether royalty relief will result in production that wouldn't otherwise occur. We rely largely on your information to make these determinations. Your application for royalty relief must contain enough information on finances, economics, reservoirs, G&G characteristics, production, and engineering estimates for us to determine whether: (1) We should grant relief under the law, and (2) the requested relief will ultimately recover more resources and return a reasonable profit on project investments. Your fabricator confirmation and post-production development reports must contain enough information for us to verify that your application reasonably represented your plans.

Applicants (respondents) are Federal OCS oil and gas lessees. Applications are required to obtain or retain a benefit. Therefore, if you apply for royalty relief, you must provide this information. We will protect information considered proprietary under applicable law and under regulations at § 203.63(b) and part 250 of this chapter.

We estimate the annual public reporting burden for this information collection will average approximately 14,700 hours, not the 38,730 hours originally estimated for the interim final rule. The reduction is due primarily to an adjustment in re-estimating the number of applications we expect to receive. We also made minor program reductions in the estimate based on the changes in the final rule. The average burden per response is estimated at 335 burden hours. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A breakdown of the estimated burden is included in the supporting statement we submitted to OMB for this collection of information. You may obtain a copy of that supporting statement from MMS's Information Collection Clearance Officer (202/208–7744). In calculating the burdens, we've assumed that respondents perform some of the requirements and maintain records in the normal course of their activities. We consider these to be usual and customary. You are invited to provide information in your comments if you disagree with this assumption.

We specifically solicit comments on the following questions:

(a) Is the proposed collection of information necessary for us to properly perform our functions, and will it be useful?

(b) Are the burden hours estimates reasonable for the proposed collection?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on the applicants, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

In addition, the Paperwork Reduction Act requires us to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. We need your comments to identify any reporting and recordkeeping cost burdens other than those discussed above. Your response should split the cost estimate into two components: (a) Total capital and startup cost component; and (b) annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

*Takings Implication Assessment*

DOI certifies that this rule does not represent a governmental action that can interfere with constitutionally protected property rights. Therefore, we don't need to do a Takings Implication Assessment under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

*E.O. 12988*

DOI has certified to OMB that the rule meets the applicable reform standards provided in sections 3(a) and 3(b)(2) of E.O. 12988.

*National Environmental Policy Act*

DOI has determined that this rule isn't a major Federal action that significantly affects the quality of the human environment, so we don't need an Environmental Impact Statement.

*Unfunded Mandates Reform Act of 1995*

DOI has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on State, local, and tribal governments or the private sector.

*''Plain English'' Style of Writing*

We've written this regulation in the form of questions in the first person (I) and answers in the second person (you) because readers may find it simpler to read and understand. A question and its answer combine to establish a rule. The applicant and the agency must follow the language in the question and its answer.

**List of Subjects in 30 CFR Part 203**

Continental shelf, Government contracts, Indians-lands, Minerals Royalties, Oil and gas exploration, Public lands-mineral resources, Sulphur.

Dated: November 6, 1997.

**Bob Armstrong,**

*Assistant Secretary, Land and Minerals Management.*

For the reasons stated in the preamble, the Minerals Management Service (MMS) is amending 30 CFR part 203 as follows:

## PART 203—RELIEF OR REDUCTION IN ROYALTY RATES

1. The authority citation for part 203 continues to read as follows:

**Authority:** 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 9701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. Subpart A is revised to read as follows:

### Subpart A—General Provisions

Sec.

203.0 What definitions apply to this part?
203.1 What is MMS's authority to grant royalty relief?
203.2 When can I get royalty relief?
203.3 Why must I pay a fee to request royalty relief?
203.4 How do the provisions in this part apply to different types of leases and projects?

## Subpart A—General Requirements

### § 203.0 What definitions apply to this part?

*Authorized field* means a field in a water depth of at least 200 meters and in the Gulf of Mexico west of 87 degrees, 30 minutes West longitude from which no current pre-Act lease produced, other than test production, before November 28, 1995.

*Complete application* means an original and two copies of the six reports consisting of the data specified in 30 CFR 203.81, 203.83 and 203.85 through 203.89, along with one set of digital information, which MMS has reviewed and found complete.

*Determination* means the binding decision by MMS on whether your field qualifies for relief or how large a royalty-suspension volume must be to make the field economically viable.

*Draft application* means the preliminary set of information and assumptions you submit to seek a nonbinding assessment on whether a field could be expected to qualify for royalty relief.

*Eligible lease* means a lease that results from a lease sale held after November 28, 1995; is located in the Gulf of Mexico (GOM) in water depths 200 meters or deeper; lies wholly west of 87 degrees, 30 minutes West longitude; and is offered subject to a royalty-suspension volume authorized by statute.

*Expansion project* means a project you propose in a Development Operations Coordination Document (DOCD) or a Supplement approved by the Secretary of the Interior after November 28, 1995, that will increase the ultimate recovery of resources from a pre-Act lease and that involves a substantial capital investment (e.g., fixed-leg platform, subsea template and manifold, tension-leg platform, multiple well project, etc.).

*Fabrication (or start of construction)* means evidence of irreversible commitment to a concept and scale of development, including copies of a binding contract between you (as applicant) and a fabrication yard, a letter from a fabricator certifying that construction has begun, and a receipt for the customary down payment.

*Field* means an area consisting of a single reservoir or multiple reservoirs all grouped on, or related to, the same general geological structural feature or stratigraphic trapping condition. Two or more reservoirs may be in a field, separated vertically by intervening impervious strata or laterally by local geologic barriers, or both.

*Lease* means a lease or unit.

*New production* means any production from a current pre-Act lease from which no royalties are due on production, other than test production, before November 28, 1995. Also, it means any production resulting from lease-development activities involving a substantial capital investment (e.g., fixed-leg platform, subsea template and manifold, tension-leg platform, multiple well project, etc.) on a current pre-Act lease under a Development Operations Coordination Document—or its supplement—approved by the Secretary of the Interior after November, 28, 1995.

*Nonbinding assessment* means an opinion by MMS of whether your field could qualify for royalty relief. It is based on your draft application and does not entitle the field to relief.

*Performance conditions* means minimum conditions you must meet, after we have granted relief and before production begins, to remain qualified for that relief. If you do not meet each one of these performance conditions, we consider it a change in material fact significant enough to invalidate our original evaluation and approval.

*Pre-Act lease* means a lease issued as a result of a lease sale held before November 28, 1995; in a water depth of at least 200 meters; and in the Gulf of Mexico west of 87 degrees, 30 minutes West longitude.

*Production* means all oil, gas, and other relevant products you save, remove, or sell from a tract or those quantities allocated to your tract under a unitization formula, as measured for the purposes of determining the amount of royalty payable to the United States.

*Project* means any activity that requires at least a permit to drill.

*Redetermination* means your request for us to reconsider our determination on royalty relief if we have rejected your application or if we have granted relief but you want a larger suspension volume.

*Renounce* means action you take to give up relief after we have granted it and before you start production.

*Sunk costs* means costs (as specified in 30 CFR 203.89(a)) of exploration, development, and production that you incur after the date of first discovery on the field and before the date we receive your complete application for royalty relief. Sunk costs include the costs of the discovery well qualified as producible under 30 CFR part 250, subpart A but do not include any pre-discovery activity costs or lease acquisition and holding costs such as cash bonus and rental payments.

*Withdraw* means action we take on a field that has qualified for relief if you have not met one or more of the performance conditions.

### § 203.1 What is MMS's authority to grant royalty relief?

The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1337, as amended by the OCS Deep Water Royalty Relief Act (DWRRA), Public Law 104–58, authorizes us to grant royalty relief in three situations.

(a) Under 43 U.S.C. 1337(a)(3)(A), we may reduce or eliminate any royalty or a net profit share specified for an OCS lease to promote increased production.

(b) Under 43 U.S.C. 1337(a)(3)(B), we may reduce, modify, or eliminate any royalty or net profit share to promote development, increase production, or encourage production of marginal resources on certain leases or categories of leases. This authority is restricted to leases in the Gulf of Mexico (GOM) that are west of 87 degrees, 30 minutes West longitude.

(c) Under 43 U.S.C. 1337(a)(3)(C), we may suspend royalties for designated volumes of new production from any lease if:

(1) Your lease is in deep water (water at least 200 meters deep);

(2) Your lease is in designated areas of the GOM (west of 87 degrees, 30 minutes West longitude);

(3) Your lease was acquired in a lease sale held before the DWRRA (before November 28, 1995);

(4) We find that your new production would not be economic without royalty relief; and

(5) Your lease is on a field that did not produce before enactment of the DWRRA, or if you propose a project to significantly expand production under a Development Operations Coordination Document (DOCD) or a supplementary DOCD, that MMS approved after November 28, 1995.

### § 203.2 When can I get royalty relief?

We can reduce or suspend royalties for OCS leases or projects that meet the criteria in the following table.

| IF YOU HAVE A LEASE— | AND IF YOU— | THEN YOU MAY BE GRANTED— |
|---|---|---|
| That generates earnings which cannot sustain production (*End-of-Life lease*),. | Seek to increase production by operating the lease beyond the point at which it is economic under the existing royalty rate,. | A reduced royalty rate on current production flows along with a higher royalty rate on some additional production flows. |
| In designated areas of the deep water GOM, acquired in a lease sale held before November 28, 1995, and you propose activity in a DOCD or supplement to significantly expand production,. | Are producing and seek to increase ultimate recovery of resources from the field with a substantial investment (e.g., platform, multiple wells, subsea template) (an *expansion project*),. | A royalty suspension for an increment to production large enough to make the project economic. |
| In designated areas of the deep water GOM, acquired in a lease sale held before November 28, 1995 (*pre-Act lease*),. | Are on a field from which no current pre-Act lease produced (other than test production) before November 28, 1995 (*authorized field*),. | A royalty suspension for a minimum production volume plus any additional volume needed to make the field economic. |

**§ 203.3 Why must I pay a fee to request royalty relief?**

(a) When you submit an application or ask for a preview assessment, you must include a fee to reimburse us for our costs of processing your application or assessment. Federal policy and law require us to recover the cost of services that confer special benefits to identifiable non-Federal recipients. The Independent Offices Appropriation Act (31 U.S.C. 9701), Office of Management and Budget Circular A–25, and the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996) authorize us to collect these fees.

(b) We will specify the necessary fees for each of the types of royalty-relief applications and possible MMS audits in a Notice to Lessees. We will periodically update the fees to reflect changes in costs as well as provide other information necessary to administer royalty relief.

**§ 203.4 How do the provisions in this part apply to different types of leases and projects?**

The tables in this section summarize how similar provisions in this part apply in different situations.

(a) Provisions relating to application content in §§ 203.51, 203.62 and 203.81 through 203.89.

| Information elements | End-of-life lease | Deep water expansion project | Pre-act deep water lease |
|---|---|---|---|
| Administrative information report | x | x | x |
| Net revenue and relief justification report (prescribed format) | x | | |
| Economic viability and relief justification report (Royalty Suspension Viability Program (RSVP) model inputs justified with Geological & Geophysical (G&G), Engineering, Production, & Cost reports) | | x | x |
| G&G report | | x | x |
| Engineering report | | x | x |
| Production report | | x | x |
| Deep Water cost report | | x | x |

(b) Provisions relating to verification in §§ 203.70, 203.81 and 203.90 through 203.91.

| Confirmation elements | End-of-life lease | Deep water expansion project | Pre-act deep water lease |
|---|---|---|---|
| Fabricator's confirmation report | | x | x |
| Post-production development report (approved by certified public accountant (CPA) | | x | x |

(c) Provisions relating to approval criteria contained in §§ 203.50, 203.52, 203.60 and 203.67.

| Approval conditions | End-of-life lease | Deep water expansion project | Pre-act deep water lease |
|---|---|---|---|
| At least 12 of the last 15 months have the required level of production | x | | |
| Already producing | x | x | |
| Well can produce | | | x |
| Royalties for qualifying months exceed 75 percent of net revenue (NR) | x | | |
| Substantial investment (e.g., platform, multiple wells, subsea template) | | x | |
| Determined to be economic only with relief | | x | x |

(d) Provisions related to redetermination in §§ 203.52 and 203.74 through 203.75.

| Redetermination conditions | End-of-life lease | Deep water expansion project | Pre-act deep water lease |
|---|---|---|---|
| After 12 months under current rate, criteria same as for approval | x | | |
| For material change in geologic data, prices, or costs | | x | x |

(e) Provisions related to the format of relief in §§ 203.53 and 203.69.

| Relief rate & volume | End-of-life lease | Deep water expansion project | Pre-act deep water lease |
|---|---|---|---|
| One-half pre-application effective lease rate on the qualifying amount, 1.5 times pre-application effective lease rate on additional production up to twice the qualifying amount, and the pre-application effective lease rate for any larger volumes | x | | |
| Qualifying amount is the average monthly production for 12 qualifying months | x | | |
| Zero royalty rate on the suspension volume and the original lease rate on additional production | | x | x |
| Field Suspension volume is at least 17.5, 52.5 or 87.5 million barrels of oil equivalent (MMBOE) | | | x |
| Amount needed to become economic | | x | x |

(f) Provisions related to discontinuing relief §§ 203.54 and 203.78.

| Full royalty resumes when— | End-of-life lease | Deep water expansion project | Pre-act deep water lease |
|---|---|---|---|
| Average NYMEX price for last 12 months is at least 25 percent above the average for the qualifying months | x | | |
| Average NYMEX price for last 12 months exceeds $28/bbl or $3.50/mcf, escalated by the gross domestic product deflator since 1994 | | x | x |

(g) Provisions related to the end, loss or reduction of relief in §§ 203.55 and 203.76.

| Relief withdrawn or reduced | End-of-life lease | Deep water expansion project | Pre-act deep water lease |
|---|---|---|---|
| Recipient so requests | x | | |
| Lease rate is at the effective rate for 12 consecutive months | x | | |
| Conditions that we may specify in the approval letter in individual cases actually occur | x | | |
| Not submitting post-production report that compares expected to actual costs | | x | x |
| Change of development system | | x | x |
| Excess delay in starting fabrication | | x | x |
| Spending less than 80 percent of proposed pre-production costs but notifying us in post-production report | | x | x |
| Amount of relief volume is produced | | x | x |

3. Subpart B is revised to read as follows:

**Subpart B—OCS Oil, Gas, and Sulfur General**

**Royalty Relief for end-of-life Leases**

Sec.

203.50 Who may apply for end-of-life royalty relief?

203.51 How do I apply for end-of-life royalty relief?

203.52 What criteria must I meet to get relief?

203.53 What relief will MMS grant?

203.54 How does my relief arrangement for an oil and gas lease operate if prices rise sharply?

203.55 Under what conditions can my end-of-life royalty relief arrangement for an oil and gas lease be ended?

203.56 Does relief transfer when a lease is assigned?

**Royalty Relief For Deep Water Expansion Projects And Pre-Act Deep Water Leases**

203.60 Who may apply for deep water royalty relief?

203.61 How do I assess my chances for getting relief?

203.62 How do I apply for relief?

203.63 Does my application have to include all leases in the field?

203.64 How many applications may I file on a field?

203.65 How long will MMS take to evaluate my application?

203.66 What happens if MMS does not act in the time allowed under § 203.65, including any extensions?

203.67 What economic criteria must I meet to get royalty relief on an authorized field or expansion project?

203.68 What pre-application costs will MMS consider in determining economic viability?

203.69 If my application is approved, what royalty relief will I receive?

203.70 What information must I provide after MMS approves relief?

203.71 How does MMS allocate a field's suspension volume between my lease and other leases on my field?

203.72 Can my lease receive more than one suspension volume?

203.73 How do suspension volumes apply to natural gas?

203.74 When will MMS reconsider its determination?

203.75 What risk do I run if I request a redetermination?

203.76 When might MMS withdraw or reduce the approved size of my relief?

203.77 May I voluntarily give up relief if conditions change?

203.78 Do I keep relief if prices rise significantly?

203.79 How do I appeal MMS's decisions related to Deep Water Royalty Relief?

**Required Reports**

203.81 What supplemental reports do royalty-relief applications require?

203.82 What is MMS's authority to collect this information?
203.83 What is in an administrative information report?
203.84 What is in a net revenue and relief justification report?
203.85 What is in an economic viability and relief justification report?
203.86 What is in a G&G report?
203.87 What is in an engineering report?
203.88 What is in a production report?
203.89 What is in a deep water cost report?
203.90 What is in a fabricator's confirmation report?
203.91 What is in a post-production development report?

## Subpart B–OLS Oil, Gas, and Sulfur General

### Royalty Relief for End–of–life Leases

#### § 203.50 Who may apply for end-of-life royalty relief?

You may apply for royalty relief in two situations.

(a) Your end-of-life lease (as defined in § 203.2) is an oil and gas lease and has average daily production of at least 100 barrels of oil equivalent (BOE) per month (as calculated in § 203.73) in at least 12 of the past 15 months. The most recent of these 12 months are considered the qualifying months.

(b) Your end-of-life lease is other than an oil and gas lease (e.g., sulphur) and has production in at least 12 of the past 15 months. The most recent of these 12 months are considered the qualifying months.

#### § 203.51 How do I apply for end-of-life royalty relief?

You must submit a complete application and the required fee to the appropriate MMS Regional Director. Your MMS regional office will provide specific guidance on the report formats. A complete application for relief includes:

(a) An administrative information report (specified in § 203.83) and

(b) A net revenue and relief justification report (specified in § 203.84).

#### § 203.52 What criteria must I meet to get relief?

(a) To qualify for relief, you must demonstrate that the sum of royalty payments over the 12 qualifying months exceeds 75 percent of the sum of net revenues (before-royalty revenues minus allowable costs, as defined in § 203.84).

(b) To re-qualify for relief, e.g., either applying for additional relief on top of relief already granted, or applying for relief sometime after your earlier agreement terminated, you must demonstrate that:

(1) You have met the criterion listed in paragraph (a) of this section, and

(2) The 12 required qualifying months of operation have occurred under the current royalty arrangement.

#### § 203.53 What relief will MMS grant?

(a) If we approve your application and you meet certain conditions, we will reduce the pre-application effective royalty rate by one-half on production up to the relief volume amount. If you produce more than the relief volume amount:

(1) We will impose a royalty rate equal to 1.5 times the effective royalty rate on your additional production up to twice the relief volume amount; and

(2) We will impose a royalty rate equal to the effective rate on all production greater than twice the relief volume amount.

(b) Regardless of the level of production or prices (see § 203.54), royalty payments due under end-of-life relief will not exceed the royalty obligations that would have been due at the effective royalty rate.

(1) The effective royalty rate is the average lease rate paid on production during the 12 qualifying months.

(2) The relief volume amount is the average monthly BOE production for the 12 qualifying months.

#### § 203.54 How does my relief arrangement for an oil and gas lease operate if prices rise sharply?

In those months when your current reference price rises by at least 25 percent above your base reference price, you must pay the effective royalty rate on all monthly production.

(a) Your current reference price is a weighted average of daily closing prices on the NYMEX for light sweet crude oil and natural gas over the most recent full 12 calendar months;

(b) Your base reference price is a weighted average of daily closing prices on the NYMEX for light sweet crude oil and natural gas during the qualifying months; and

(c) Your weighting factors are the proportions of your total production volume (in BOE) provided by oil and gas during the qualifying months.

#### § 203.55 Under what conditions can my end-of-life royalty relief arrangement for an oil and gas lease be ended?

(a) If you have an end-of-life royalty relief arrangement, you may renounce it at any time. The lease rate will return to the effective rate during the qualifying period in the first full month following our receipt of your renouncement of the relief arrangement.

(b) If you pay the effective lease rate for 12 consecutive months, we will terminate your relief. The lease rate will return to the effective rate in the first full month following this termination.

(c) We may stipulate in the letter of approval for individual cases certain events that would cause us to terminate relief because they are inconsistent with an end-of-life situation.

#### § 203.56 Does relief transfer when a lease is assigned?

Yes. Royalty relief is based on the lease circumstances, not ownership. It transfers upon lease assignment.

### Royalty Relief For Deep Water Expansion Projects And Pre-Act Deep Water Leases

#### § 203.60 Who may apply for deep water royalty relief?

Under conditions in §§ 203.61(b) and 203.62, you may apply for royalty relief if:

(a) You are a lessee of a lease in water at least 200 meters deep in the GOM and lying wholly west of 87 degrees, 30 minutes West longitude;

(b) We have assigned your lease to a field (as defined in § 203.0); and

(c) You hold a pre-Act lease on an authorized field (as defined in § 203.0) or you propose an expansion project (as defined in § 203.0).

#### § 203.61 How do I assess my chances for getting relief?

You may ask for a nonbinding assessment (a formal opinion on whether a field would qualify for royalty relief) before turning in your first complete application on an authorized field. This field must have a qualifying well under 30 CFR part 250, subpart A, or be on a lease that has allocated production under an approved unit agreement.

(a) To request a nonbinding assessment, you must:

(1) Submit a draft application in the format and detail specified in guidance from the MMS regional office for the GOM;

(2) Propose to drill at least one more appraisal well if you get a favorable assessment; and

(3) Pay a fee under § 203.3.

(b) You must wait at least 90 days after receiving our assessment to apply for relief under § 203.62.

(c) This assessment is not binding because a complete application may contain more accurate information that does not support our original

assessment. It will help you decide whether your proposed inputs for evaluating economic viability and your supporting data and assumptions are adequate.

**§ 203.62 How do I apply for relief?**

You must send a complete application and the required fee to the MMS GOM Regional Director.

(a) Your application for deep water royalty relief must include an original and two copies (one set of digital information) of:

(1) Administrative information report;

(2) Deep water economic viability and relief justification report;

(3) G&G report;

(4) Engineering report;

(5) Production report; and

(6) Deep water cost report.

(b) Section 203.82 explains why we are authorized to require these reports.

(c) Sections 203.81, 203.83, and 203.85 through 203.89 describe what these reports must include. The MMS GOM Regional Office will guide you on the format for the required reports.

**§ 203.63 Does my application have to include all leases in the field?**

For authorized fields, we will accept only one joint application for all leases that are part of the designated field on the date of application, except as provided in paragraph (c) of this section and § 203.64.

(a) The Regional Director maintains a Field Names Master List with updates of all leases in each designated field.

(b) To avoid sharing proprietary data with other lessees on the field, you may submit your proprietary G&G report separately from the rest of your application. Your application is not complete until we receive all the required information for each lease on the field. We will not disclose proprietary data when explaining our assumptions and reasons for our determinations under § 203.67.

(c) We will not require a joint application if you show good cause and honest effort to get all lessees in the field to participate. If you must exclude a lease from your application because its lessee will not participate, that lease is ineligible for the royalty relief for the designated field.

**§ 203.64 How many applications may I file on a field?**

You may file one complete application for royalty relief during the life of the field. However, you may send another application if:

(a) You are eligible to apply for a redetermination under § 203.74;

(b) You apply for royalty relief for an expansion project;

(c) You withdraw the application before we make a determination; or

(d) You apply for end-of-life royalty relief.

**§ 203.65 How long will MMS take to evaluate my application?**

(a) We will determine within 20 working days if your application for royalty relief is complete. If your application is incomplete, we will explain in writing what it needs. If you withdraw a complete application, you may reapply.

(b) We will evaluate your first application on a field within 180 days and a redetermination under § 203.75 within 120 days after we say it is complete.

(c) We may ask to extend the review period for your application under the conditions in the following table.

| If— | Then we may— |
|---|---|
| We need more records to audit sunk costs | Ask to extend the 120-day or 180-day evaluation period. The extension we request will equal the number of days between when you receive our request for records and the day we receive the records. |
| We cannot evaluate your application for a valid reason, such as missing vital information or inconsistent or inconclusive supporting data. | Add another 30 days. We may add more than 30 days, but only if you agree. |
| We need more data, explanations, or revision | Ask to extend the 120-day or 180-day evaluation period. The extension we request will equal the number of days between when you receive our request and the day we receive the information. |

(d) We may change your assumptions under § 203.62 if our technical evaluation reveals others that are more appropriate. We may consult with you before a final decision and will explain any changes.

(e) We will notify all designated lease operators within a field when royalty relief is granted.

**§ 203.66 What happens if MMS does not act in the time allowed under § 203.65, including any extensions?**

If we do not act within the timeframes established in § 203.65, the conditions in the following table apply.

| If you apply for royalty relief for— | And we do not decide within the time specified— | As long as you— |
|---|---|---|
| An authorized field | You get the minimum suspension volumes specified in § 203.69 | Abide by §§ 203.70 & 76 |
| An expansion project | You get a royalty suspension for the first year of production | Abide by §§ 203.70 & 76 |

**§ 203.67 What economic criteria must I meet to get royalty relief on an authorized field or expansion project?**

Your field or project must require royalty relief to be economic and must become economic with this relief. That is, we will not approve applications if we determine that royalty relief cannot make the field or project economically viable.

**§ 203.68 What pre-application costs will MMS consider in determining economic viability?**

(a) We will not consider ineligible costs as set forth in § 203.89(h) in determining economic viability for purposes of royalty relief.

(b) We will consider sunk costs (allowable expenditures on and after the discovery well as specified in § 203.89(a)) in accordance with the following table.

| We will— | When— |
|---|---|
| Include sunk costs | The field has not produced, other than test production, before the application submission date. |
| Not include sunk costs | Determining whether an authorized field can become economic with any relief (see § 203.67). |
| Not include sunk costs | Determining how much suspension volume is necessary to make development economic (see § 203.69(c)). |
| Not include sunk costs | Evaluating an expansion project. |

**§ 203.69 If my application is approved, what royalty relief will I receive?**

This section applies only to leases on which you have applied for and received a royalty-suspension volume under section 302 of the DWRRA. We will not collect royalties on a specified suspension volume for your field. Suspension amounts include volumes allocated to a lease under an approved unit agreement and exclude any volumes that do not bear a royalty under the lease or the regulations of this chapter.

(a) For authorized fields, the minimum royalty-suspension volumes are:

(1) 17.5 million barrels of oil equivalent (MMBOE) for fields in 200 to 400 meters of water;

(2) 52.5 MMBOE for fields in 400 to 800 meters of water; and

(3) 87.5 MMBOE for fields in more than 800 meters of water.

(b) If the application for the field includes leases in different categories of water depth, we apply the minimum royalty-suspension volume for the deepest lease then associated with the field. We base the water depth and makeup of a field on the water-depth delineations in the ''Royalty Suspension Areas Map'' and the Field Names Master List and updates in effect at the time your application is approved. These publications are available from the GOM Regional Office.

(c) You will get a royalty-suspension volume above the minimum if we determine that you need more to make developing the field economic.

(d) For expansion projects, the minimum suspension volumes do not apply. If we determine that your expansion project may be economic only with relief, we will determine and grant you the royalty-suspension volume necessary to make the project economic.

(e) A royalty-suspension volume will continue through the end of the month in which cumulative production reaches that volume. The cumulative production is from all the leases in the authorized field or expansion project that are entitled to share the royalty suspension volume.

**§ 203.70 What information must I provide after MMS approves relief?**

You must submit reports to us as indicated in the following table. Sections 203.81 and 203.90 through 203.91 describe what these reports must include. MMS's GOM Regional Office will tell you the formats.

| Required report | When due to MMS | Due date extensions |
|---|---|---|
| Fabricator's confirmation report. | Within 1 year after approval of relief | MMS Director may grant you an extension under § 203.79(c) for up to 1 year. |
| Post-production report | Within 60 days after the start of production that is subject to the approved royalty-suspension volume. | With acceptable justification from you, MMS's GOM Regional Director may extend due date up to 60 days. |

**§ 203.71 How does MMS allocate a field's suspension volume between my lease and other leases on my field?**

The allocation depends on when production occurs, when the lease is assigned to the field, and whether we award the volume suspension by an approved application or establish it in the lease terms.

(a) If your authorized field has an approved royalty-suspension volume under §§ 203.67 and 203.69, we will suspend payment of royalties on production from all applying leases in the field until their cumulative production equals the approved volume. The following conditions also apply as appropriate:

| If— | Then— | And— |
|---|---|---|
| We assign an eligible lease to your field after we approve or establish relief. | We will not change your field's royalty-suspension volume. | The newly assigned leases may share in any remaining royalty relief. |
| We assign a pre-Act lease to your field after you submit a complete application. | We will not change your field's royalty-suspension volume. | The newly assigned leases may share in any remaining royalty relief by filing the short form application specified in § 203.83 and authorized in § 203.82. |
| We assigned a pre-Act lease to your field before you submitted the royalty relief application. | We will not change your field's royalty-suspension volume. | The newly assigned lease will not share in the relief if it did not participate in the application. |
| We reassign a well on a pre-Act lease to another field. | The past production from that well counts toward the royalty suspension volume of the field to which the well is reassigned. | The past production from that well will not count toward any royalty suspension volume granted to the field from which it was reassigned. |

(b) If your authorized field has an automatic royalty-suspension volume established under § 260.110 of this chapter, we will suspend payment of royalties on production from all eligible leases in the field until their cumulative production equals the automatic volume. The following conditions also apply as appropriate:

| If— | Then— | And— |
|---|---|---|
| Another eligible lease is assigned to your field | Your field's royalty-suspension volume does not change. | The newly assigned lease may share in relief only to the extent that cumulative production from your field is less than the automatic volume. |
| A pre-Act lease applies (along with the other leases in the field) and qualifies (subject to the field's automatic suspension volume) for royalty relief under §§ 203.67 and 203.69. | Your field's royalty-suspension volume may increase or stay the same. | All leases in the field share the one, higher royalty-suspension volume if we approve the application; *or* The eligible leases in the field keep the automatic volume if we reject the application. |

(c) If you have an expansion project with more than one lease, the royalty-suspension volume for each lease equals that lease's actual incremental production from the project (or production allocated under an approved unit agreement) until cumulative incremental production for all leases in the project equals the project's approved royalty-suspension volume.

(d) You may receive a royalty-suspension volume only if your entire lease is west of 87 degrees, 30 minutes West longitude. If the field lies on both sides of this meridian, only leases located entirely west of the meridian will receive a royalty-suspension volume.

**§ 203.72 Can my lease receive more than one suspension volume?**

Yes. You may apply for royalty relief that involves more than one suspension volume under § 203.62 in two circumstances.

(a) Each field that includes your lease may receive a separate royalty-suspension volume, if it meets the evaluation criteria of § 203.67.

(b) An expansion project on your lease may receive a separate royalty-suspension volume, even if we have already granted a royalty-suspension volume to the field that encompasses the project. But the reserves associated with the project must not have been part of our original determination, and the project must meet the evaluation criteria of § 203.67.

**§ 203.73 How do suspension volumes apply to natural gas?**

You must measure natural gas production under the royalty-suspension volume as follows: 5.62 thousand cubic feet of natural gas, measured in accordance with 30 CFR part 250, subpart L, equals one barrel of oil equivalent.

**§ 203.74 When will MMS reconsider its determination?**

Under certain conditions, you may request a redetermination if we deny your application, if you want your approved royalty-suspension volume to change, after we withdraw approval, or after you renounce royalty relief. To be eligible for a redetermination, at least one of the following three conditions must occur.

(a) You have significant new G&G data and you previously have not either requested a redetermination or reapplied for relief after we withdrew approval or you relinquished royalty relief. ''Significant'' means that the new G&G data:

(1) Results from drilling new wells or getting new three-dimensional seismic data and information (but not reinterpreting old data);

(2) Did not exist at the time of the earlier application; and

(3) Changes your estimates of gross resource size, quality, or projected flow rates enough to materially affect the results of our earlier determination.

(b) Your current reference price decreases by more than 25 percent from your base reference price. For royalty relief on deep water expansion projects and pre-Act deep water leases:

(1) Your current reference price is a weighted average of daily closing prices on the NYMEX for light sweet crude oil and natural gas over the most recent full 12-calendar months;

(2) Your base reference price is a weighted average of daily closing prices on the NYMEX for oil and gas for the most recent full 12-calendar months preceding the date of your most recently approved application for this royalty relief; and

(3) The weighting factors are the proportions of the total production volume (in BOE) for oil and gas associated with the most likely scenario (identified in §§ 203.85 and 203.88) from your most recently approved application for this royalty relief.

(c) Before starting to build your development and production system, you have revised your estimated development costs, and they are more than 120 percent of the eligible development costs associated with the most likely scenario from your most recently approved application for this royalty relief.

**§ 203.75 What risk do I run if I request a redetermination?**

If you request a redetermination after we have granted you a suspension volume, you could lose some or all of the previously granted relief. This can happen because you must file a new complete application and pay the required fee, as discussed in § 203.62. We will evaluate your application under § 203.67 using the conditions prevailing at the time of your redetermination request. In our evaluation, we may find that you should receive a larger, equivalent, smaller, or no suspension volume. This means we could find that you do not qualify for the amount of relief previously granted or for any relief at all.

**§ 203.76 When might MMS withdraw or reduce the approved size of my relief?**

We will withdraw approval of relief for any of the following reasons.

(a) You change the type of development system proposed in your application (e.g., change from a fixed platform to floating production system, tension leg platform to a moored catenary system such as a SPAR platform, an independent development and production system to one with subsea wells tied back to a host production facility, etc.).

(b) You do not start building the proposed development and production system within 1 year of the date we approved your application—unless the MMS Director grants you an extension under § 203.79(c).

(c) You do not tell us in your post-production development report (§ 203.70), and we find out your actual development costs are less than 80 percent of the eligible development costs estimated in your application's most likely scenario. Development costs are those incurred between the application submission date and start of production. If you tell us about this result in the post-production development report, you may retain 50 percent of the original royalty-suspension volume.

(d) We granted you a royalty-suspension volume after you qualified

for a redetermination under § 203.74(c), and we find out your actual development costs are less than 90 percent of the eligible development costs associated with your application's most likely scenario. Development costs are those expenditures defined in § 203.89(b) incurred between your application submission date and start of production.

(e) You do not send us the fabrication confirmation report or the post-production development report, or you provide false or intentionally inaccurate information that was material to our granting royalty relief under this section. You must pay royalties and late-payment interest determined under 30 U.S.C. 1721 and § 218.54 of this chapter on all volumes for which you used the royalty suspension. You also may be subject to penalties under other provisions of law.

**§ 203.77 May I voluntarily give up relief if conditions change?**

You may renounce approved royalty-suspension volumes as soon as you anticipate violating one of the withdrawal conditions, or for any other reason, before you start production.

**§ 203.78 Do I keep relief if prices rise significantly?**

No, you must pay full royalties if prices rise above the statutory base price for light sweet crude oil or natural gas.

(a) Suppose the arithmetic average of the daily closing NYMEX light sweet crude oil prices for the previous calendar year exceeds $28.00 per barrel, as adjusted in paragraph (f) of this section. In this case, we retract the royalty relief authorized in this section and you must:

(1) Pay royalties on all oil production for the previous year at the lease stipulated royalty rate plus interest (under 30 U.S.C. 1721 and § 218.54 of this chapter) by April 30 of the current calendar year, and

(2) Pay royalties on all your oil production in the current year.

(b) Suppose the arithmetic average of the daily closing NYMEX natural gas prices for the previous calendar year exceeds $3.50 per million British thermal units (Btu), as adjusted in paragraph (f) of this section. In this case, we retract the royalty relief authorized in this section and you must:

(1) Pay royalties on all natural gas production for the previous year at the lease stipulated royalty rate plus interest (under 30 U.S.C. 1721 and § 218.54 of this chapter) by April 30 of the current calendar year, and

(2) Pay royalties on all your natural gas production in the current year.

(c) Production under both paragraphs (a) and (b) of this section counts as part of the royalty-suspension volume.

(d) You are entitled to a refund or credit, with interest, of royalties paid on any production (that counts as part of the royalty-suspension volume):

(1) Of oil if the arithmetic average of the closing oil prices for the current calendar year is $28.00 per barrel or less, as adjusted in paragraph (f) of this section, and

(2) Of gas if the arithmetic average of the closing natural gas prices for the current calendar year is $3.50 per million Btu or less, as adjusted in paragraph (f) of this section.

(e) You must follow our regulations in part 230 of this chapter for receiving refunds or credits.

(f) We change the prices referred to in paragraphs (a), (b) and (d) of this section during each calendar year after 1994. These prices change by the percentage the implicit price deflator for the gross domestic product changed during the preceding calendar year.

**§ 203.79 How do I appeal MMS's decisions related to Deep Water Royalty Relief?**

(a) Once we have designated your lease as part of a field and notified you and other affected operators of the designation, you can request reconsideration by sending the MMS Director a letter within 15 days that also states your reasons. The MMS Director's response is the final agency action.

(b) Our decisions on your application for relief from paying royalty under § 203.67 and the royalty-suspension volumes under § 203.69 are final agency actions.

(c) If you cannot start construction by the deadline in § 203.76(b) for reasons beyond your control (e.g., strike at the fabrication yard), you may request an extension up to 1 year by writing the MMS Director and stating your reasons. The MMS Director's response is the final agency action.

(d) We will notify you of all final agency actions by certified mail, return receipt requested. Final agency actions are not subject to appeal to the Interior Board of Land Appeals under 30 CFR part 290 and 43 CFR part 4. They are judicially reviewable under section 10(a) of the Administrative Procedure Act (5 U.S.C. 702) *only* if you file an action within 30 days of the date you receive our decision.

## Required Reports

**§ 203.81 What supplemental reports do royalty-relief applications require?**

(a) You must send us the supplemental reports listed below that apply to your field. §§ 203.83 through 203.91 describe these reports in detail.

| Required reports | End-of-life lease | Deep water expansion project | Pre-act deep water lease |
|---|---|---|---|
| Administrative information report | x | x | x |
| Net revenue & relief justification report | x | | |
| Economic viability & relief justification report (RSVP model inputs justified by other required reports) | | x | x |
| G&G report | | x | x |
| Engineering report | | x | x |
| Production report | | x | x |
| Deep water cost report | | x | x |
| Fabricator's confirmation report | | x | x |
| Post-production development report | | x | x |

(b) You must certify that all information in your application, fabricator's confirmation and post-production development reports is accurate, complete, and conforms to the most recent content and presentation guidelines available from the MMS GOM Regional Office.

(c) You must submit with your application and post-production development report an additional report prepared by a CPA that:

(1) Assesses the accuracy of the historical financial information in your report; and

(2) Certifies that the content and presentation of the financial data and

information conforms to our most recent guidelines on royalty relief.

(d) You must identify the people in the CPA firm who prepared the reports referred to in paragraph (c) of this section and make them available to us to respond to questions about the historical financial information. We may also further review your records to support this information.

**§ 203.82 What is MMS's authority to collect this information?**

The Office of Management and Budget (OMB) approved the information collection requirements in part 203 under 44 U.S.C. 3501 *et seq.* and assigned OMB control number 1010–0071.

(a) We use the information to determine whether royalty relief will result in production that wouldn't otherwise occur. We rely largely on your information to make these determinations.

(1) Your application for royalty relief must contain enough information on finances, economics, reservoirs, G&G characteristics, production, and engineering estimates for us to determine whether:

(i) We should grant relief under the law, and

(ii) The requested relief will ultimately recover more resources and return a reasonable profit on project investments.

(2) Your fabricator confirmation and post-production development reports must contain enough information for us to verify that your application reasonably represented your plans.

(b) Applicants (respondents) are Federal OCS oil and gas lessees. Applications are required to obtain or retain a benefit. Therefore, if you apply for royalty relief, you must provide this information. We will protect information considered proprietary under applicable law and under regulations at § 203.63(b) and part 250 of this chapter.

(c) The Paperwork Reduction Act of 1995 requires us to inform you that we may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(d) You may send comments regarding any aspect of the collection of information under this part, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Minerals Management Service, Mail Stop 4230, 1849 C Street, N.W., Washington, DC 20240; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior (1010–0071), Washington, DC 20503.

**§ 203.83 What is in an administrative information report?**

This report identifies the field or lease for which royalty relief is requested and must contain the following items:

(a) The field or lease name;

(b) The serial number of leases we have assigned to the field, names of the lease title holders of record, the lease operators, and whether any lease is part of a unit;

(c) Lessee's designation, the API number and location of each well that has been drilled on the field or lease or project (not required for non-oil and gas leases);

(d) The location of any new wells proposed under the terms of the application (not required for non-oil and gas leases);

(e) A description of field or lease history;

(f) Full information as to whether you will pay royalties or a share of production to anyone other than the United States, the amount you will pay, and how much you will reduce this payment if we grant relief;

(g) The type of royalty relief you are requesting;

(h) Confirmation that we approved a DOCD or supplemental DOCD (Deep Water expansion project applications only); and

(i) A narrative description of the development activities associated with the proposed capital investments and an explanation of proposed timing of the activities and the effect on production (Deep Water applications only).

**§ 203.84 What is in a net revenue and relief justification report?**

This report presents cash flow data for 12 qualifying months, using the format specified in the ''Guidelines for the Application, Review, Approval, and Administration of Royalty Relief for End-of-Life Leases'', U.S. Department of the Interior, MMS. Qualifying months for an oil and gas lease are the most recent 12 months out of the last 15 months that you produced at least 100 BOE per day on average. Qualifying months for other than oil and gas leases are the most recent 12 of the last 15 months having some production.

(a) The cash flow table you submit must include historical data for:

(1) Lease production subject to royalty;

(2) Total revenues;

(3) Royalty payments out of production;

(4) Total allowable costs; and

(5) Transportation and processing costs.

(b) Do not include in your cash flow table the non-allowable costs listed at 30 CFR 220.013 (a), (b), and (d) through (k) or:

(1) OCS rental payments on the lease(s) in the application;

(2) Damages and losses;

(3) Taxes;

(4) Any costs associated with exploratory activities;

(5) Civil or criminal fines or penalties;

(6) Fees for your royalty relief application; and

(7) Costs associated with existing obligations (e.g., royalty overrides or other forms of payment for acquiring the lease).

(c) We may, in reviewing and evaluating your application, disallow costs when you have not shown they are necessary to operate the lease, or if it appears you spent the money only to qualify for royalty relief.

**§ 203.85 What is in an economic viability and relief justification report?**

This report should show that your project appears economic without royalties and sunk costs using the RSVP model we provide. The format of the report and the assumptions and parameters we specify are found in the ''Guidelines for the Application, Review, Approval and Administration of the Deep Water Royalty Relief Program,'' U.S. Department of the Interior, MMS. Clearly justify each parameter you set in every scenario you specify in the RSVP. You may provide supplemental information, including your own model and results. The economic viability and relief justification report must contain the following items for an oil and gas lease.

(a) Economic assumptions we provide which include:

(1) Starting oil and gas prices;

(2) Real price growth;

(3) Real cost growth or decline rate, if any;

(4) Base year;

(5) Range of discount rates; and

(6) Tax rate (for use in determining after-tax sunk costs).

(b) Analysis of projected cash flow (from the date of the application using annual totals and constant dollar values) which shows:

(1) Oil and gas production;

(2) Total revenues;

(3) Capital expenditures;

(4) Operating costs;

(5) Transportation costs; and

(6) Before-tax net cash flow without royalties, overrides, sunk costs, and ineligible costs.

(c) Discounted values which include:

(1) Discount rate used (selected from within the range we specify).

(2) Before-tax net present value without royalties, overrides, sunk costs, and ineligible costs.

(d) Demonstrations that:

(1) All costs, gross production, and scheduling are consistent with the data in the G&G, engineering, production, and cost reports (§§ 203.86 through 203.89) and

(2) The development and production scenarios provided in the various reports are consistent with each other and with the proposed development system. You can use up to three scenarios (conservative, most likely, and optimistic), but you must link each to a specific range on the distribution of resources from the RSVP Resource Module.

### § 203.86 What is in a G&G report?

This report supports the reserve and resource estimates used in the economic evaluation and must contain each of the following elements.

(a) Seismic data which includes:

(1) Non-interpreted 2D/3D survey lines reflecting any available state-of-the-art processing technique in a format readable by MMS and specified by the deep water royalty relief guidelines;

(2) Interpreted 2D/3D seismic survey lines reflecting any available state-of-the-art processing technique identifying all known and prospective pay horizons, wells, and fault cuts;

(3) Digital velocity surveys in the format of the GOM region's letter to lessees of 10/1/90;

(4) Plat map of ''shot points;'' and

(5) ''Time slices'' of potential horizons.

(b) Well data which includes:

(1) Hard copies of all well logs in which—

(i) The 1-inch electric log shows pay zones and pay counts and lithologic and paleo correlation markers at least every 500-feet,

(ii) The 1-inch type log shows missing sections from other logs where faulting occurs,

(iii) The 5-inch electric log shows pay zones and pay counts and labeled points used in establishing resistivity of the formation, 100 percent water saturated ($R_o$) and the resistivity of the undisturbed formation ($R_t$), and

(iv) The 5-inch porosity logs show pay zones and pay counts and labeled points used in establishing reservoir porosity or labeled points showing values used in calculating reservoir porosity such as bulk density or transit time;

(2) Digital copies of all well logs spudded before December 1, 1995;

(3) Core data, if available;

(4) Well correlation sections;

(5) Pressure data;

(6) Production test results; and

(7) Pressure-volume-temperature analysis, if available.

(c) Map interpretations which includes for each reservoir in the field:

(1) Structure maps consisting of top and base of sand maps showing well and seismic shot point locations;

(2) Isopach maps for net sand, net oil, net gas, all with well locations;

(3) Maps indicating well surface and bottom hole locations, location of development facilities, and shot points; and

(4) Identification of reservoirs not contemplated for development.

(d) Reservoir-specific data which includes:

(1) Probability of reservoir occurrence with hydrocarbons;

(2) Probability the hydrocarbon in the reservoir is all oil and the probability it is all gas;

(3) Distributions or point estimates (accompanied by explanations of why distributions less appropriately reflect the uncertainty) for the parameters used to estimate reservoir size, i.e., acres and net thickness;

(4) Most likely values for porosity, salt water saturation, volume factor for oil formation, and volume factor for gas formation;

(5) Distributions or point estimates (accompanied by explanations of why distributions less appropriately reflect the uncertainty) for recovery efficiency (in percent) and oil or gas recovery (in stock-tank-barrels per acre-foot or in thousands of cubic feet per acre foot);

(6) A gas/oil ratio distribution or point estimate (accompanied by explanations of why distributions less appropriately reflect the uncertainty) for each reservoir; and

(7) A yield distribution or point estimate (accompanied by explanations of why distributions less appropriately reflect the uncertainty) for each gas reservoir.

(e) Aggregated reserve and resource data which includes:

(1) The aggregated distributions for reserves and resources (in BOE) and oil fraction for your field computed by the resource module of our RSVP model;

(2) A description of anticipated hydrocarbon quality (i.e., specific gravity); and

(3) The ranges within the aggregated distribution for reserves and resources that define the development and production scenarios presented in the engineering and production reports. Typically there will be three ranges specified by two positive reserve and resource points on the aggregated distribution. The range at the low end of the distribution will be associated with the conservative development and production scenario; the middle range will be related to the most likely development and production scenario; and, the high end range will be consistent with the optimistic development and production scenario.

### § 203.87 What is in an engineering report?

This report defines the development plan and capital requirements for the economic evaluation and must contain the following elements.

(a) A description of the development concept (e.g., tension leg platform, fixed platform, floater type, subsea tieback, etc.) which includes:

(1) Its size and

(2) The construction schedule.

(b) An identification of planned wells which includes:

(1) The number;

(2) The type (platform, subsea, vertical, deviated, horizontal);

(3) The well depth;

(4) The drilling schedule;

(5) The kind of completion (single, dual, horizontal, etc.); and

(6) The completion schedule.

(c) A description of the production system equipment which includes:

(1) The production capacity for oil and gas and a description of limiting component(s);

(2) Any unusual problems (low gravity, paraffin, etc.);

(3) All subsea structures;

(4) All flowlines; and

(5) Schedule for installing the production system.

(d) A discussion of any plans for multi-phase development which includes:

(1) The conceptual basis for developing in phases and goals or milestones required for starting later phases; and

(2) An explanation for excluding the reservoirs you are not planning to develop.

(e) A set of development scenarios consisting of activity timing and scale associated with each of up to three production profiles (conservative, most likely, optimistic) provided in the production report for your field (§ 203.88). Each development scenario and production profile must denote the likely events should the field size turn out to be within a range represented by one of the three segments of the field size distribution. If you send in fewer than three scenarios, you must explain why fewer scenarios are more efficient across the whole field size distribution.

**§ 203.88 What is in a production report?**

This report supports your development and production timing and product quality expectations and must contain the following elements.

(a) Production profiles by well completion and field that specify the actual and projected production by year for each of the following products: oil, condensate, gas, and associated gas. The production from each profile must be consistent with a specific level of reserves and resources on the aggregated distribution of field size.

(b) Production drive mechanisms for each reservoir.

**§ 203.89 What is in a deep water cost report?**

This report lists all actual and projected costs for your field, must explain and document the source of each cost estimate, and must identify the following elements.

(a) Sunk cost, which are all your eligible post-discovery exploration, development, and production expenses (no third party costs), and also include the eligible costs of the discovery well on the field. Report them in nominal dollars and only if you have documentation. We count sunk costs in an evaluation (specified in § 203.68) as after-tax expenses, using nominal dollar amounts.

(b) Appraisal, delineation and development costs. Base them on actual spending, current authorization for expenditure, engineering estimates, or analogous projects. These costs cover:

(1) Platform well drilling and average depth;

(2) Platform well completion;

(3) Subsea well drilling and average depth;

(4) Subsea well completion;

(5) Production system (platform); and

(6) Flowline fabrication and installation.

(c) Production costs based on historical costs, engineering estimates, or analogous projects. These costs cover:

(1) Operation;

(2) Equipment; and

(3) Existing royalty overrides (we will not use the royalty overrides in evaluations).

(d) Transportation costs, based on historical costs, engineering estimates, or analogous projects. These costs cover:

(1) Oil or gas tariffs from pipeline or tankerage;

(2) Trunkline and tieback lines; and

(3) Gas plant processing for natural gas liquids.

(e) Abandonment costs, based on historical costs, engineering estimates, or analogous projects. You should provide the costs to plug and abandon only wells and to remove only production systems for which you have not incurred costs as of the time of application submission. You should also include a point estimate or distribution of prospective salvage value for all potentially reusable facilities and materials, along with the source and an explanation of the figures provided.

(f) A set of cost estimates consistent with each one of up to three field-development scenarios and production profiles (conservative, most likely, optimistic). You should express costs in constant real dollar terms for the base year. You may also express the uncertainty of each cost estimate with a minimum and maximum percentage of the base value.

(g) A spending schedule. You should provide costs for each year (in real dollars) for each category in paragraphs (a) through (f) of this section.

(h) A summary of other costs which are ineligible for evaluating your need for relief. These costs cover:

(1) Expenses before first discovery on the field;

(2) Cash bonuses;

(3) Fees for royalty relief applications;

(4) Lease rentals, royalties, and payments of net profit share and net revenue share;

(5) Legal expenses;

(6) Damages and losses;

(7) Taxes;

(8) Interest or finance charges, including those embedded in equipment leases;

(9) Fines or penalties; and

(10) Money spent on previously existing obligations (e.g., royalty overrides or other forms of payment for acquiring a financial position in a lease, expenditures for plugging wells and removing and abandoning facilities that existed on the application submission date).

**§ 203.90 What is in a fabricator's confirmation report?**

This report shows you have committed in a timely way to the approved system for production. This report must include the following (or its equivalent for unconventionally acquired systems):

(a) A copy of the contract(s) under which the fabrication yard is building the approved system for you;

(b) A letter from the contractor building the system to the MMS's GOM Regional Supervisor—Production and Development, certifying when construction started on your system; and

(c) Evidence of an appropriate down payment or equal action that you've started acquiring the approved system.

**§ 203.91 What is in a post-production development report?**

For each cost category in the deep water cost report, you must compare actual costs up to the date when production starts to your planned pre-production costs. If your application included more than one development scenario, you need to compare actual costs with those in your scenario of most likely development. Keep supporting records for these costs and make them available to us on request.

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## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## 30 CFR Part 260

**RIN 1010–AC14**

## Royalty Relief for New Leases in Deep Water

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Final rule.

**SUMMARY:** The Secretary of the Interior is authorized to offer Outer Continental Shelf (OCS) tracts in parts of the Gulf of Mexico for lease with suspension of royalties for a volume, value, or period of production. This applies to tracts in water depths of 200 meters or more. This final rule specifies the royalty-suspension terms for lease sales using this bidding system.

**DATES:** This final rule is effective February 17, 1998.

**FOR FURTHER INFORMATION CONTACT:** Walter Cruickshank, Chief, Washington Division, Office of Policy and Management Improvement, at (202) 208–3822.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*Legislative*

On November 28, 1995, President Clinton signed Public Law 104–58, which included the Outer Continental Shelf Deep Water Royalty Relief Act (''Act''). The Act contains four major provisions concerning new and existing leases. New leases are tracts leased during a sale held after the Act's enactment on November 28, 1995. Existing leases are all other leases.

First, section 302 of the Act clarifies the Secretary's authority in 43 U.S.C. 1337(a)(3) to reduce royalty rates on existing leases to promote development, increase production, and encourage production of marginal resources on

producing or non-producing leases. This provision applies only to leases in the Gulf of Mexico west of 87 degrees, 30 minutes West longitude.

Second, section 302 also provides that ''new production'' from existing leases in deep water (water at least 200 meters deep) qualifies for royalty suspensions if the Secretary determines that the new production would not be economic without royalty relief. The Act defines ''new production'' as production (1) From a lease from which no royalties are due on production, other than test production, before the date of the enactment of the Outer Continental Shelf Deep Water Royalty Relief Act; or (2) resulting from lease development activities under a Development Operations Coordination Document (DOCD), or supplement thereto that would expand production significantly beyond the level anticipated in the DOCD approved by the Secretary after the date of the Act. The Secretary must determine the appropriate royalty-suspension volume on a case-by-case basis, subject to specified minimums for leases not in production before the date of enactment. This provision also applies only to leases in the Gulf of Mexico west of 87 degrees, 30 minutes West longitude.

Third, section 303 establishes a new bidding system that allows the Secretary to offer tracts with royalty suspensions for a period, volume, or value the Secretary determines.

Fourth, section 304 provides that all tracts offered within 5 years of the date of enactment in deep water (water at least 200 meters deep) in the Gulf of Mexico west of 87 degrees, 30 minutes West longitude, must be offered under the new bidding system. The following minimum volumes of production are not subject to a royalty obligation:

- 17.5 million barrels of oil equivalent (MMBOE) for leases in 200 to 400 meters of water;
- 52.5 MMBOE for leases in 400 to 800 meters of water; and
- 87.5 MMBOE for leases in more than 800 meters.

*Regulatory*

On February 2, 1996, we published a final rule modifying the regulations governing the bidding systems we use to offer OCS tracts for lease (61 FR 3800). New § 260.110(a)(7) implements the new bidding system under section 303 of the Act.

We published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** on February 23, 1996 (61 FR 6958), and informed the public of our intent to develop comprehensive regulations implementing the Act. The ANPR sought comments and recommendations to assist us in that process. In addition, we conducted a public meeting in New Orleans on March 12–13, 1996, about the matters the ANPR addressed.

On March 25, 1996, we published an interim final rule in the **Federal Register** (61 FR 12022) specifying the royalty-suspension terms under which the Secretary would make tracts available under the bidding system requirements of sections 303 and 304 of the Act. We issued an interim final rule, in part, because we needed royalty relief rules in place before the lease sale held on April 24, 1996. However, in the interim final rule we asked for comments on any of the provisions and stated that we would consider those comments and issue a final rule. This final rule now modifies some of the provisions in the March 25, 1996, interim final rule.

On May 31, 1996, we published another interim final rule in the **Federal Register** (61 FR 27263) implementing section 302 of the Act. The interim final rule established the terms and conditions under which the Minerals Management Service (MMS) would suspend royalty payments on certain deep water leases issued as a result of a lease sale held before November 28, 1995. (The rule also contained provisions dealing with royalty relief on producing leases under the authority granted the Secretary by the OCS Lands Act.) We again asked for comments that we would consider before issuing a final rule.

Simultaneous with the publication of this rule, we are issuing another final rule (RIN 1010–AC13) to replace the interim final rule implementing section 302 of the Act. The final rule will revise 30 CFR 203 to establish conditions for suspension of royalty payments on certain deep water leases issued as a result of lease sales held before November 28, 1995.

## II. Responses to Comments

One respondent—Exxon Exploration Company (Exxon)—submitted comments on the Interim Final Rule for Deep Water Royalty Relief for New Leases, issued March 25, 1996.

Exxon disagreed with our definition of the term ''Field'' (§ 260.102). Exxon said that our definition could be applied in such a way as to place unrelated and widely separated reservoirs within the same field. Exxon offered an alternative definition that it said provides for the creation of fields based on geology by allowing the inclusion of separate reservoirs in the same field when there is a meaningful geologic relationship between those reservoirs and avoids inclusion of reservoirs when such a relationship does not exist.

Exxon offered this alternative definition:

> ''Field means an area consisting of a single hydrocarbon reservoir or multiple hydrocarbon reservoirs all grouped on or related to same local geologic feature or stratigraphic trapping condition. There may be two or more reservoirs in a field that are separated vertically by intervening impervious strata. Separate reservoirs would be considered to constitute separate fields if significant lateral separation exists and/or they are controlled by separate trapping mechanisms. Reservoirs vertically separated by a significant interval of nonproductive strata may be considered as separate fields when their reservoir quality, fluid content, drive mechanisms, and trapping mechanisms are sufficiently different to support such a determination.''

Except for a minor editorial change, we have decided to leave the definition of ''Field'' unchanged from the interim final rule for the following reasons:

- The definition in the interim final rule is similar to, or consistent with, standard definitions used in industry and government, including the American Petroleum Institute, the National Petroleum Council, and the Department of Energy's Energy Information Administration.
- We do not segregate reservoirs vertically since the reservoirs are developed from the same platforms and use the same infrastructure. Affected lessees/operators typically make development decisions based on a primary objective(s) knowing that secondary targets exist which they will pursue subsequently.
- Reservoir quality, fluid content, and drive mechanisms are not appropriate determinants for field designations. These factors are reservoir performance/recovery issues. Indeed, such information is rarely available to MMS at the time field determinations are made. We have not considered these factors in our past field designations and their inclusion now would complicate the process significantly and lead to too much subjectivity.
- Elements of the alternative definition, e.g., ''a significant interval of nonproductive strata'' and ''significant lateral separation'' would be difficult to define and even more difficult to apply consistently.

We recognize industry's concerns about field designations. This rule establishes, as discussed below, a process whereby lessees may appeal field designations to the Director, MMS.

Other steps include:

- The MMS *Field Naming Handbook*, which explains our methodology for

designating fields, is available on the Internet (www.mms.gov). The Gulf of Mexico Region will entertain suggestions for improvements in the methodology.

- We will elevate the level at which we make field definition decisions in the Gulf of Mexico Region. The Chief, Reserves Section, Office of Resource Evaluation, will make these determinations after a lease has a well into the field qualified as producible.
- As part of the field designation process, affected lessees/operators will have the chance to review and discuss the field designation with Gulf of Mexico Region personnel before MMS makes a final decision.

## III. Summary of Modifications to the Interim Final Rule

As discussed below, we have modified the interim final rule to:

- Allow for appeals of field designations;
- Clarify when the cumulative royalty-suspension volume ends;
- Describe how MMS will establish and allocate royalty-suspension volume in fields that have a combination of *eligible* leases and leases that are granted a royalty-suspension volume under section 302 of the Act; and
- Eliminate the reference to a pressure base standard in the provision for the conversion of natural gas to oil equivalency (§ 260.110(d)(14)). The rule now indicates you must measure that natural gas in accordance with the procedures set forth in 30 CFR 250, subpart L.

1. We have added a new provision (§ 260.110(d)(2)) establishing that you or any other affected lessees may appeal to the Director the decision designating your lease as part of a field. The Director's decision is a final agency action subject to judicial review.

2. The preamble to the interim final rule indicated that a royalty-suspension volume would continue until the end of the month in which cumulative production from *eligible* leases in the field reached the royalty-suspension volume for the field. The interim final rule itself did not include this provision. This final rule now includes a provision (§ 260.110(d)(10)) that a royalty-suspension volume will continue through the end of the month in which cumulative production from leases in the field entitled to share the royalty-suspension volume reaches that volume. The purpose of this provision is to avoid the complications that would occur for royalty payors if the royalty rate changed in the middle of the month.

3. We have modified § 260.110(d)(9) and added a new § 260.110(d)(10) to describe how MMS will establish and allocate royalty-suspension volumes in fields having a combination of pre-Act and *eligible* leases. (Pre-Act leases are defined as OCS leases issued as a result of a sale held before November 28, 1995; in a water depth of at least 200 meters; and in the Gulf of Mexico west of 87 degrees, 30 minutes West longitude. See 30 CFR 203.60 through 203.80). The provisions are necessary to account for and ensure consistency with the deep water royalty relief rules for pre-Act leases (§ 203.60). We published the interim final rule for pre-Act leases on May 31, 1996 (61 FR 27263), after publication of the interim final rule for new leases in deep water on March 25, 1996.

We have added wording in § 260.110(d)(9) for cases where an *eligible* lease is added to a field that includes pre-Act leases granted a royalty-suspension volume under section 302 of the Act. This rule provides that the addition of the *eligible* lease will not change the field's established royalty-suspension volume. The added lease(s) may share in the suspension volume even if the volume is more than the *eligible* lease would qualify for based on its water depth.

The new § 260.110(d)(10) describes a case where pre-Act leases in a field that includes *eligible* leases apply for and receive a royalty-suspension volume larger than the suspension volume established for the field by the *eligible* leases. This rule provides that the *eligible* leases may share in the larger suspension volume to the extent of their actual production until cumulative production by all lessees equals the royalty-suspension volume.

4. This final rule states that lessees must measure natural gas in accordance with 30 CFR 250, Subpart L. We have eliminated the specific measurement procedures from the interim final rule because a forthcoming final rule will change those procedures.

## IV. Administrative Matters

### *Executive Order (E.O.) 12866*

This rule is a significant rule under E.O. 12866 due to novel policy issues arising out of legal mandates. You may obtain a copy of the determination from MMS. The Office of Management and Budget (OMB) has reviewed this rule.

### *Regulatory Flexibility Act*

The Department of the Interior (DOI) has determined that the primary impact of this rule, i.e., royalty relief to spur deep water oil and gas development, may have a significant effect on small entities although we can't estimate their number at this time. The number of small entities affected will depend on how many of them acquire leases that meet the statutory and regulatory criteria for royalty relief at lease sales between November 28, 1995, and November 28, 2000.

Exploration and development activities in the deep water areas of the Gulf of Mexico have traditionally been conducted by the major oil companies because of the expertise and financial resources required. ''Small entities'' (classified by the Small Business Administration as oil and gas producers with fewer than 500 employees) are increasingly active on the OCS, including in deep water, and we expect that trend to continue. The only firm to whom we have granted royalty relief so far under section 302 of the Act is a small entity.

In any case, this rule will have positive impacts on OCS oil and gas companies, large or small. Royalty relief in the form of a royalty-suspension volume is automatically established for leases that meet the statutory and regulatory criteria. No applications or special reports are necessary.

The beneficial effect of this relief on companies' financial operations will be substantial. Once we determine that a lease is *eligible* for a royalty-suspension volume, the value of that relief may range from tens of millions of dollars to over $100 million. The suspensions will allow companies to recover more of their investment costs before paying royalties, which may allow greater opportunity for small companies to operate in deep water.

This rule also will have a very positive impact on small entities. Constructing and equipping the platforms and other infrastructure associated with deep water development are huge projects that involve not only large companies but numerous small businesses nationwide as well. Once the platforms are operational, other small businesses will provide supplies and services.

### *Paperwork Reduction Act*

This rule contains no reporting and recordkeeping requirements subject to the Paperwork Reduction Act of 1995.

### *Takings Implication Assessment*

DOI certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment prepared pursuant to E.O. 12630, Governmental Actions and Interference with

Constitutionally Protected Property Rights, is not required.

*Unfunded Mandates Reform Act of 1995*

DOI has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this final rule will not impose a cost of $100 million or more in any given year on State, local, and tribal governments, or the private sector.

*E.O. 12988*

DOI has certified to OMB that this regulation meets the applicable standards provided in section 3(b)(2) of E.O. 12988.

*National Environmental Policy Act*

We examined this rulemaking and have determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

**List of Subjects in 30 CFR Part 260**

Continental shelf, Government contracts, Minerals royalties, Oil and gas exploration, Public lands—mineral resources.

Dated: September 22, 1997.

**Sylvia V. Baca,**

*Assistant Secretary, Land and Minerals Management.*

For the reasons stated in the preamble, the Minerals Management Service (MMS) amends 30 CFR part 260, as follows:

## PART 260—OUTER CONTINENTAL SHELF OIL AND GAS LEASING

1. The authority citation for part 260 continues to read as follows:

**Authority:** 43 U.S.C. 1331 and 1337.

2. In § 260.102, the definitions for ''Eligible lease'' and ''Field'' are revised to read as follows:

### § 260.102 Definitions.

* * * * *

*Eligible lease* means a lease that results from a sale held after November 28, 1995; is located in the Gulf of Mexico in water depths 200 meters or deeper; lies wholly west of 87 degrees, 30 minutes West longitude; and is offered subject to a royalty-suspension volume authorized by statute.

*Field* means an area consisting of a single reservoir or multiple reservoirs all grouped on, or related to, the same general geological structural feature and/or stratigraphic trapping condition. Two or more reservoirs may be in a field, separated vertically by intervening impervious strata, or laterally by local geologic barriers, or by both.

* * * * *

3. In § 260.110, paragraph (d) is revised to read as follows:

### § 260.110 Bidding systems.

* * * * *

(d) This paragraph explains how the royalty-suspension volumes in section 304 of the Outer Continental Shelf Deep Water Royalty Relief Act, Public Law 104–58, apply to *eligible* leases. For purposes of this paragraph, any volumes of production that are not royalty bearing under the lease or the regulations in this chapter do not count against royalty-suspension volumes. Also, for the purposes of this paragraph, production includes volumes allocated to a lease under an approved unit agreement.

(1) Your *eligible* lease may receive a royalty-suspension volume only if your lease is in a field where no current lease produced oil or gas (other than test production) before November 28, 1995. Paragraph (d) of this section applies only to *eligible* leases in fields that meet this condition.

(2) We will assign your lease to an existing field or designate a new field and will notify you and other affected lessees of that assignment. Within 15 days of that notification, you or any of the other affected lessees may file a written request with the Director, MMS, for reconsideration accompanied by a statement of reasons. The Director will respond in writing either affirming or reversing the assignment decision. The Director's decision is final for the Department and is not subject to appeal to the Interior Board of Land Appeals under 30 CFR part 290 and 43 CFR part 4.

(3) The Final Notice of Sale will specify the water depth for each *eligible* lease. Our determination of water depth for each lease is final once we issue the lease. The Notice also will specify the royalty-suspension volume applicable to each water depth. The minimum royalty-suspension volumes for fields are:

(i) 17.5 million barrels of oil equivalent (MMBOE) in 200 to 400 meters of water;

(ii) 52.5 MMBOE in 400 to 800 meters of water; and

(iii) 87.5 MMBOE in more than 800 meters of water.

(4) When production (other than test production) first occurs from any of the *eligible* leases in a field, we will determine what royalty-suspension volume applies to the *eligible* lease(s) in that field. The determination is based on the royalty-suspension volumes specified in paragraph (d)(3) of this section.

(5) If a new field consists of *eligible* leases in different water depth categories, the royalty-suspension volume associated with the deepest *eligible* lease applies.

(6) If your *eligible* lease is the only *eligible* lease in a field, you do not owe royalty on the production from your lease up to the applicable royalty-suspension volume.

(7) If a field consists of more than one *eligible* lease, payment of royalties on the *eligible* leases' initial production is suspended until their cumulative production equals the field's established royalty-suspension volume. The royalty-suspension volume for each *eligible* lease is equal to each lease's actual production (or production allocated under an approved unit agreement) until the field's established royalty-suspension volume is reached.

(8) If an *eligible* lease is added to a field that has an established royalty-suspension volume as the result of an approved application for royalty relief submitted under 30 CFR part 203 or as the result of one or more *eligible* leases having been assigned previously to the field, the field's royalty-suspension volume will not change even if the added lease is in deeper water. If a royalty-suspension volume has been granted under 30 CFR part 203 that is larger than the minimum specified for that water depth, the added *eligible* lease may share in the larger suspension volume. The lease may receive a royalty-suspension volume only to the extent of its production before the cumulative production from all leases in the field entitled to share in the suspension volume equals the field's previously established royalty-suspension volume.

(9) If a pre-Act lease(s) receives a royalty-suspension volume under 30 CFR part 203 for a field that already has a royalty-suspension volume due to *eligible* leases, then the *eligible* and pre-Act leases will share a single royalty-suspension volume. (Pre-Act leases are OCS leases issued as a result of a sale held before November 28, 1995; in a water depth of at least 200 meters; and in the Gulf of Mexico west of 87 degrees, 30 minutes West longitude. See 30 CFR part 203). The field's royalty-suspension volume will be the larger of the volume for the *eligible* leases or the volume MMS grants in response to the pre-Act leases' application. The suspension volume for each lease will be its actual production from the field until cumulative production from all leases in the field equals the suspension volume.

(10) A royalty-suspension volume will continue through the end of the month in which cumulative production from leases in a field entitled to share the royalty-suspension volume reaches that volume.

(11) If we reassign a well on an *eligible* lease to another field, the past production from that well will count toward the royalty-suspension volume, if any, specified for the field to which it is reassigned. The past production will not count toward the royalty suspension volume, if any, for the field from which it was reassigned.

(12) You may receive a royalty-suspension volume only if your entire lease is west of 87 degrees, 30 minutes West longitude. A field that lies on both sides of this meridian will receive a royalty-suspension volume only for those *eligible* leases lying entirely west of the meridian.

(13) Your lease may obtain more than one royalty-suspension volume. If a new field is discovered on your *eligible* lease that already benefits from the royalty-suspension volume for another field, production from that new field receives a separate royalty suspension.

(14) You must measure natural gas production subject to the royalty-suspension volume as follows: 5.62 thousand cubic feet of natural gas, measured in accordance with 30 CFR part 250, subpart L, equals one barrel of oil equivalent.

[FR Doc. 98–843 Filed 1–15–98; 8:45 am]

BILLING CODE 4310–MR–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 63

**[FRL–5950–4]**

## National Emission Standards for Gasoline Distribution Facilities; Bulk Gasoline Terminals and Pipeline Breakout Stations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of limited exclusion for gasoline distribution facilities.

**SUMMARY:** The EPA publishes today notification of a limited exclusion from applicability for gasoline distribution facilities that would be, but for this action, subject to the air toxic provisions of 40 CFR part 63, subpart R, the National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).

**DATES:** This policy took effect on December 12, 1997, the day that the attached letter detailing this policy was signed. Petitions for review of this determination must be filed on or before March 17, 1998 in accordance with the provisions of section 307(b)(1) of the Clean Air Act (CAA).

**ADDRESSES:** The related material in support of this policy may be examined during normal business hours at the United States Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Air Enforcement Division, Ariel Rios Building, Room 1119, 12th and Pennsylvania Ave., NW, Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** Charles Garlow of the U.S. EPA, Air Enforcement Division (Mail Code 2242A), 401 M St SW, Washington, DC 20460, telephone (202) 564–1088.

**SUPPLEMENTARY INFORMATION:** On October 15, 1997, the American Petroleum Institute (API) requested relief from the applicability of the Gasoline Distribution National Emission Standard for Hazardous Air Pollutants (NESHAP) as the compliance date of December 15, 1997 was approaching. Certain members of the API trade association had timely applied for synthetic minor permits so as to qualify as area or minor sources not subject to the Gasoline Distribution MACT standard. However, state or local permitting authorities had, in many instances, not been able to process the otherwise-approvable applications before December 15, 1997. Since many states have a public comment period, it was apparent that these permits could not be issued prior to the compliance date even if every effort was made. Therefore, API asserted, through no fault of their members, they would be subject to the requirements of this NESHAP when they assumed they would not be, resulting in some sources potentially facing operational shutdowns or violation of the standard.

The EPA responded, as is detailed in the attached letter, by granting a time limited exclusion from applicability to those sources that notify the EPA that they have timely applied and have otherwise made good faith efforts to obtain the synthetic minor permits in question. Due to delays in publishing this document, sources wishing to avail themselves of this policy have until January 30, 1998, to notify EPA of their status, if they have not already done so.

In addition to publication of this document, US EPA has placed a copy of this policy letter on its Technology Transfer Network (TTN) bulletin board service and Website.

(Sec. 112, Clean Air Act (42 U.S.C. 7412))

**Bruce Buckheit,**

*Director, Air Enforcement Division.*

December 12, 1997.

Ms. Ellen Siegler,

*American Petroleum Institute, 1220 L Street, NW, Washington, DC 20005–4070.*

Re: Gasoline Distribution MACT Standard.

Dear Ms. Siegler: The American Petroleum Institute recently approached the Environmental Protection Agency (EPA) seeking relief from the Gasoline Distribution Maximum Achievable Control Technology (MACT) standard for those facilities that timely sought permits limiting their potential to emit so as to qualify as area sources not covered by that standard. We were then informed that numerous facilities (through no fault of their own) have not yet been issued such permits by their permit issuing authorities. Under EPA's ''once in—always in'' policy, such facilities will become subject to the Gasoline Distribution MACT standard on that rule's compliance date (December 15, 1997).

As a general matter, we believe that it is the source's obligation to achieve compliance with the regulation as of the effective date of that regulation. Where, as here, the regulation provided 3 years to achieve compliance, we believe that sources that wish to avoid the imposition of major source obligations by seeking ''synthetic minor'' permits should do so shortly after the date of rule promulgation. Given the substantial workload imposed on permitting authorities by the Title III and Title V programs, those who wait until there is less than 1 year from the compliance date to submit their permit application should anticipate that there is a substantial risk, that they must bear, that the synthetic minor permit may not be issued in time. However, because this is an issue of first impression, and facilities may have relied in good faith on representations of permitting authorities that permits received within a shorter time frame would be processed by December 15, 1997, we have agreed to provide a limited enforcement discretion as set out below.

Based on the facts presented and subject to the terms, conditions and limitations outlined herein, we concluded that the EPA should and, therefore, will provide limited relief for certain facilities:

*Limited Exclusion*—EPA will not consider an otherwise covered facility to be subject to the Gasoline Distribution MACT standard (1) if the facility owner or operator filed a complete application with its appropriate permitting authority for a permit limiting its potential to emit so as to qualify as an area source not covered by that standard prior to June 15, 1997, and (2) if it identifies the facility to EPA not later than January 15, 1998. This limited exclusion is limited to a 90-day period and will expire on March 15, 1998.

*Conditional Extension*—If a facility has not yet received its permit by March 15, 1998, it will be subject to the Gasoline Distribution MACT standard as of this date *unless* such facility notifies EPA, prior to March 15, 1998, that an additional period of time is needed for good cause shown. If the facility has not yet received such permit and then certifies to

EPA that it has made diligent efforts to obtain the needed permit by (1) providing all information requested by the permitting authority and (2) accepting reasonable permit conditions, then EPA may grant an additional extension for up to 90 days beyond March 15, 1998. Failure to accept reasonable permit terms and conditions will not be recognized as a good cause basis for seeking an extension. If a facility has not yet received its permit by that later date, it will be subject fully to the Gas Distribution MACT standard as of its compliance date.

*General Conditions/Limitations*—As an express condition of benefiting from and operating under the above-described limited exclusion, each facility must comply at all times with each of the following:

- The source must have submitted the synthetic minor permit by June 15, 1997.
- The permit application terms and conditions must effectively limit emissions to area source levels.
- The source must certify to EPA and maintain full compliance with all the terms, conditions and representations reflected or referred to in its timely, complete permit application.
- The reason for the delay in the issuance of the permit must not be the fault of the source (e.g., at least one source will not be issued a permit because of unresolved New Source Performance Standards violations at the facility. Such source does not qualify for this exclusion.
- The source must submit, by January 15, 1998, supporting documentation, including the executive summary and enforcement provisions of the permit application with transmittal date, any indication from the permitting agency regarding the completeness of the application and recent communication from or to the permitting authority indicating the current status of the application (e.g., public comment being sought, etc.). Such documentation must be mailed to Air Enforcement Division, Attention: Charles Garlow, Esq., US EPA, Mail Code 2242A, 401 M St. SW, Washington, D.C. 20460, or sent by delivery service to the same Division, Ariel Rios Building, Room 2111, 12th and Pennsylvania Aves., N.W., Washington, DC 20004.

A failure to fully comply with each and every requirement, as may be determined by EPA, will void this grant of discretionary enforcement relief, cause such facility to be subject to the requirements of the Gasoline Distribution MACT standard as of its compliance date (December 15, 1997), and subject the facility to possible enforcement for violation of the MACT standard.

Sources in this situation should be reminded that if they presently qualify as synthetic minor sources, by operation of the January 25, 1995 Seitz/Van Heuvelen policy memorandum entitled ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act'', then these sources do not need to utilize the option described here prior to the termination date of that policy. For example, if a source has documented actual emissions since January 1994 of less than 50% of the major source thresholds, then a permit is not needed to limit the PTE. Other options are described in this memorandum.

As the Gasoline Distribution MACT standard compliance date is fast approaching, you have agreed to endeavor to distribute this memorandum broadly at the earliest practicable time to all facilities that may be subject to the MACT standard.

Questions regarding this matter should be directed to the Air Enforcement Division, 202–564–1088.

Sincerely,

Steven A. Herman,

*Assistant Administrator.*

Identical letters sent to:

Mr. John Prokof, Independent Liquid Terminal Association (ILTA), 1133 15th Street, NW, Suite 650, Washington, D.C. 20005.

Ms. Michele Joy, Association of Oil Pipelines (AOPL), 110 Vermont Ave, NW, Washington, D.C. 20005.

Mr. Tom Osburn, Society of Independent Gasoline Marketers of America (SIGMA), 11911 Freedom Drive, Reston, Virginia 20190.

cc: Regional Counsel, Regions I–X, Regional Air Program Directors, Regions I–X, John Seitz, Director, OAQPS, Lydia Wegman, Deputy Director, OAQPS, Bruce Jordan, Director, ESD.

[FR Doc. 98–1133 Filed 1–15–98; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 20

**[CC Docket No. 94–102, FCC 97–402]**

### Wireless Compatibility With Enhanced 911 Emergency Calling Systems

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule, petitions for reconsideration.

**SUMMARY:** The Federal Communications Commission has adopted a *Memorandum Opinion and Order* in the wireless Enhanced 911 (E911) rulemaking proceeding, reaffirming its commitment to the rapid implementation of technologies needed to bring emergency help to wireless callers throughout the United States. The action is taken to resolve petitions for reconsideration of the rules adopted in the *First Report and Order* concerning the availability of basic 911 services and the implementation of E911 for wireless telecommunications services. The primary goal of this proceeding is to ensure that reliable, effective 911 and E911 service is available to wireless users as soon as technologically possible. The limited revisions to the Commission's rules adopted in this decision are intended to remedy technical problems raised in the record. This *Memorandum Opinion and Order* contains proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

**EFFECTIVE DATE:** The definition of ''designated PSAP'' in § 20.3, and §§ 20.18(a), (b), (c), and (g) become effective January 16, 1998. The remaining rule amendments become effective February 17, 1998. Written comments on the proposed or modified information collections by the public are due January 20, 1998. Written comments must be submitted by the OMB on the proposed information collections on or before February 10, 1998.

**ADDRESSES:** A copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, N.W., Washington, D.C. 20503, or via the Internet to fain__t@al.eop.gov.

**FOR FURTHER INFORMATION CONTACT:** Won Kim or Dan Grosh, Policy Division, Wireless Telecommunications Bureau, at (202) 418–1310. For additional information concerning the information collections contained in the *Memorandum Opinion and Order,* contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the *memorandum Opinion and Order* (MO&O) in CC Docket No. 94–102, FCC 97–402 , adopted December 1, 1997, and released December 23, 1997. The complete text of this MO&O is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, at (202) 857–3800, 1231 20th Street, N.W., Washington, D.C. 20036.

### Synopsis of the Memorandum Opinion and Order

1. In this MO&O, pursuant to Section 1.429 of the Commission's Rules,[1] the

[1] *See* Section 1.429(b) of the Commission's Rules, 47 CFR 1.429(b).

Commission made limited revisions to its rules by (1) modifying basic 911 rules to require wireless carriers to transmit all 911 calls without regard to validation procedures and regardless of code identification; (2) temporarily suspending enforcement of the requirement that wireless carriers provide 911 access to customers using TTY devices until October 1, 1998, but only for digital systems that are not compatible with TTY calls and subject to a notification requirement; (3) modifying the definition of ''covered Specialized Mobile Radio (SMR)'' service for E911 purposes to include only providers of real-time, two-way interconnected voice service the networks of which utilize intelligent switching capability and offer seamless handoff to customers, and to extend this definition to broadband Personal Communications Services (PCS) and cellular service as well as SMR providers; and (4) clarifying the Phase I requirement for call back numbers and modifying associated rule definitions. The Commission also reemphasized that its 911 rules are intended to be technology-neutral, and to encourage the most efficient and effective technologies to report the location of wireless handsets, the most important E911 feature both for those seeking help in emergencies and for the public safety organizations that respond to emergency calls.

2. On June 12, 1996, the Commission adopted a First Report and Order (R&O) and a Further Notice of Proposed Rulemaking in this proceeding, establishing rules requiring wireless carriers to implement 911 and enhanced 911 (E911) services.[2] The Commission received 16 petitions for reconsideration of the R&O. In the MO&O, the Commission resolved issues raised in the petitions for reconsideration or clarification of the rules adopted in the R&O.

3. For basic 911 services, the MO&O first reviewed the rules that require wireless carriers to transmit 911 calls from all handsets with a ''code identification'' without validation and to transmit all 911 calls, even those without code identification, if requested to do so by a Public Safety Answering Point (PSAP) administrator.[3] Based on the record of this reconsideration proceeding, the Commission revised the rules by requiring covered carriers to forward all 911 calls, without regard to validation procedures and regardless of code identification. Accordingly, the Commission deleted the definitions of ''code identification'' and ''mobile identification number'' from the Commission's Rules. The Commission also eliminated the PSAP choice to selectively receive wireless 911 calls, while generally reaffirming basic 911 requirement schedules.

4. The MO&O also reexamined the requirement that, no later than October 1, 1997, covered carriers be capable of transmitting 911 calls from individuals with speech or hearing disabilities through means other than mobile radio handsets, such as through the use of Text Telephone Devices (TTYs). Based on the record in the reconsideration proceeding, the Commission modified the Section 20.18(c) TTY implementation deadlines for analog wireless systems and digital wireless systems. For analog systems, the implementation deadline is December 1, 1997, the expiration of the stay of the rule.[4] For digital systems, the Commission decided to temporarily suspend enforcement of the TTY requirement until October 1, 1998, subject to conditions that protect consumers, encourage compliance, and ensure minimal delay.

5. Under the revised rules, carriers whose digital systems are not compatible with TTY calls must make every reasonable effort to notify current and potential subscribers that they will not be able to use TTYs to call 911 with digital wireless devices and services. In addition, wireless industry associations and consumer groups are required to file quarterly progress reports on efforts and achievements in E911–TTY compatibility, including efforts made to implement the notification requirements. Based on these quarterly status reports, the Wireless Telecommunications Bureau, under delegated authority, may extend the suspension of enforcement of section 20.18(c) for an additional three months, until January 1, 1999, if necessary.

6. In the MO&O, the Commission concluded that the ''covered SMR'' definition adopted in the R&O is overinclusive with respect to certain types of SMR systems and should be narrowed to include only those systems that will directly compete with cellular and PCS in providing comparable public mobile interconnected service. Accordingly, the Commission modified its rules to change the definition of ''covered SMR'' for 911 purposes to include only providers of real-time, two-way interconnected voice service the network of which utilize intelligent switching capability and offer seamless handoff to customers, and to extend this definition to broadband PCS and cellular as well as SMR providers.

7. In addition, under the revised rules, ''covered'' SMR systems that offer dispatch services to customers may meet their 911 and E911 obligations to their dispatch customers either by providing customers with direct access to 911 services, or alternatively, by routing dispatch customer emergency calls through a dispatcher. A covered carrier who chooses the latter alternative for its dispatch customers must make every reasonable effort to explicitly notify current and potential dispatch customers and their users that they will not be able to directly reach a PSAP by calling 911 and that, in the event of an emergency, the dispatcher should be contacted.

8. As to E911 Phase I requirements and implementation schedule, the Commission upheld its decision to require that, as of April 1, 1998, covered carriers be able to provide automatic number identification (ANI) and cell site information for 911 calls to the PSAP. At the same time, the MO&O clarified carriers' obligations to provide call back numbers and modified associated rule definitions. With respect to the call back obligation, the Commission clarified that where the handset's directory number is not known to the serving carrier, the carrier's obligations extend only to delivering 911 calls to PSAPs. Therefore, covered carriers will not be required to provide reliable call back numbers to PSAPs in the case of mobile units that are not associated with a dialable telephone number. However, carriers will be expected to transmit all calling party information that is compatible with their systems for 911 calls from validated customers.

9. The MO&O also upheld Phase II requirements and the implementation schedule by clarifying that, as of October 1, 2001, covered carriers provide to the designated PSAP the location of all 911 calls by longitude and latitude such that the accuracy for all calls is 125 meters or less using a Root Mean Square (RMS) methodology. In denying petitions for reconsideration of the Phase II implementation schedule, the Commission concluded that broadband PCS and other digital system providers had sufficient notice

[2] *See* 61 FR 40348; 61 FR 40374 (August 2, 1996).

[3] ''Code Identification'' was defined in section 20.03 of the Commission's Rules to mean a handset that transmits the 34-bit Mobile Identification Number (MIN) typically used by cellular or PCS licensees, or the functional equivalent of a MIN in the case of SMR services.

[4] The October 1, 1997 implementation date for section 20.18(c) of the Commission's Rules was temporarily stayed until November 30, 1997. *See* Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94–102, Order, DA 97–2119 (released Sept. 30, 1997).

to prepare for the implementation of the E911 features and it is not necessary to delay the October 1, 2001 implementation schedule at this time. In addition, the Commission reaffirmed that its rules and their application are intended to be technologically and competitively neutral.

10. The MO&O also reaffirmed the Commission's decision not to exempt providers of E911 service from liability for certain negligent acts, finding that none of the petitioners presents arguments sufficient to persuade the Commission to modify its determination that it is unnecessary to exempt providers of E911 service from liability and to preempt state tort law. Likewise, the Commission reaffirmed the decision in the R&O not to prescribe a particular E911 cost recovery methodology. The Commission continued to find no adequate basis on this record for preemption of the various state and local funding mechanisms that are in place or under development, or for concluding that state and local cost recovery mechanisms will be discriminatory or inadequate.

**Paperwork Reduction Act**

11. This MO&O contains either proposed or modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this MO&O, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due on January 20, 1998. OMB comments are due on February 10, 1998. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (2) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

*OMB Approval Number:* 3060-xxxx.

*Title:* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling System (Memorandum Opinion and Order, CC Docket 94–102).

*Form Number:* N/A.

*Type of Review:* New Collection.

*Respondents:* Cellular, broadband PCS, and SMR carriers subject to the modified rules; State and local government entities; Public Safety Answering Points.

*Number of Respondents:* 42,031.

*Estimated Time Per Response:*

a. Two time notification burden on 4,700 PSAPs @ 1 hr per=9,400 hours.

b. Two time response burden on carriers @ 1 hr per=9,400 hours.

c. One time review or establishment of cost recovery program by 375 government entities @ 10 hrs per=3,750 hours.

One time burden for consultation for remaining 125 government entities using contractors to review and/or establish cost recovery program @ 1 hr per=125 hours.

d. One time burden for 3,469 digital licensees to place notification information in digital user manuals or service contracts @ ½ hr per=1,735 hours.

e. One time burden on 3,469 digital licensees to notify existing digital subscribers @ ¼ hr per=868 hours.

f. One time burden on 7 representative organizations to draft survey for quarterly TTY report @ 1 hr per=7 hours.

Quarterly burden on 7 representative organizations to review survey results @ 12 hrs per=84 hours.

Quarterly burden on 7 representative organizations to draft joint quarterly TTY report @ 20 hrs. per=140 hours.

Quarterly burden on 3,469 licensees to respond to survey @ 8 hrs. per=27,752 hours.

g. One time burden on 31,530 SMR licensees offering direct dispatch capability to place notification in user manuals and service agreements @ ½ hour per=15,765 hours.

h. One time burden on 31,530 SMR licensees offering direct dispatch capability to notify existing customers @ ¼ hr per=7,884.

i. One time burden on 35,424 carriers to consult on determining a designated PSAP @ 1 hr per=35,424 hours.

j. One time burden on 500 government entities to consult with 35,424 carriers in determining a designated PSAP @ 1 hr per=35,424 hours.

k. One time burden on 1,400 telephone systems to consult on definition of pseudo-ANI @ 3 hr per=4,200 hours.

l. One time burden on 8,500 licensees to prepare a deployment schedule to accompany a waiver request @ 4 hours per=34,000 hours.

One time burden on 8,500 licensees to consult with a contract engineer to prepare a deployment schedule to accompany a waiver request @ 1 hr per=8,500 hours.

*Total Annual Burden:* 194,457 hours.

*Estimated Costs Per Respondent:* $7,050,000.

Review and/or establishment of cost recovery program to 125 state and local entitities using contract CPAs @ $200 per hour=$2000 per entity.

Preparation of deployment schedule to 8,500 licensees using contract engineers @ $100 per hour=$800.

*Needs and Uses:* The notification burden on PSAPs will be used by carriers to verify that wireless 911 calls are referred to PSAPs who have the technical capability to use the data to the caller's benefit. TTY and dispatch notification requirements will be used to avoid consumer confusion as to the ability to reach 911 services using their wireless handsets. These notifications will also avoid delays in emergency response time. The quarterly reports will be used to monitor the progress of TTY compatibility. Consultations on the specific meaning assigned to pseudo-ANI are appropriate to ensure that all parties are working with the same information. Coordination between carriers and State and local entities to determine the PSAPs that are appropriate to receive 911 calls is necessary because of the difficulty in assigning PSAPs based on the location of the caller. The deployment schedule that should be submitted by carriers seeking a waiver of the Phase I or Phase II schedule will be used by the Commission to guarantee that the rules adopted in this proceeding are enforced in as timely a manner as possible within technological constraints.

**Procedural Matters**

*Supplemental Final Regulatory Flexibility Analysis*

12. As required by the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), a Final Regulatory Flexibility Analysis (FRFA) was incorporated the *E911 First Report and Order* in this proceeding. The Commission's Supplemental Final Regulatory Flexibility Analysis (SFRFA) in this *Memorandum Opinion and Order* (MO&O) reflects revised or additional information to that contained in the FRFA. The SFRFA is thus limited to matters raised in response to the R&O and addressed in this MO&O. This SFRFA conforms to the RFA, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law No. 104–121, 110 Stat. 846 (1996). [5]

[5] Title II of the Contract with America Act is ''The Small Business Regulatory Enforcement Fairness Act of 1996'' (SBREFA), codified at 5 U.S.C. § 601 *et seq.*

I. Need For and Objectives of the Action

13. The actions taken in this MO&O are in response to petitions for reconsideration or clarification of the rules adopted in the *E911 First Report and Order* requiring wireless carriers to implement 911 and Enhanced 911 (E911) services. The limited revisions made in the MO&O are intended to remedy technical problems raised in the record while otherwise reaffirming the Commission's commitment to the rapid implementation of the technologies needed to bring emergency help to wireless callers throughout the United States.

II. Summary of Significant Issues Raised by the Public Comments in Response to the Final Regulatory Flexibility Statement

14. No comments were received in direct response to the FRFA, but the Commission received 16 petitions for reconsideration of the *E911 First Report and Order.* The majority of petitioners ask that the Commission reconsider the rules governing when covered wireless carriers must make 911 access available to callers. Other petitioners ask that the Commission reconsider or clarify a variety of issues ranging from the implementation date for covered carriers to provide 911 access to people with hearing or speech disabilities through the use of Text Telephone Devices, such as TTYs, to the definition of which wireless carriers must comply with the rules, particularly in regard to ''covered Special Mobile Radios (SMRs).'' Paragraphs 1–5 of this MO&O provide a more detailed discussion of the petitions and the resulting actions. Additionally, as discussed in paragraphs 10–12, several parties filed *ex parte* presentations raising technical issues which prompted the Commission to stay the October 1, 1997 implementation dates for § 20.18 (a), (b), and (c) through November 30, 1997, and to seek further comment.

III. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

15. The rules adopted in this MO&O will apply to providers of broadband Personal Communications Service (PCS), Cellular Radio Telephone Service, and Specialized Mobile Radio (SMR) Services in the 800 MHz and 900 MHz bands. Service providers in these services are subject to 911 requirements solely to the extent that they offer real-time, two way switched voice service that is interconnected with the public switched network and utilize an in-network switching facility which enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls.

*a. Estimates for Cellular Licensees.* 16. As indicated in the FRFA, the Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons.[6] In addition to the data supplied in the FRFA, a more recent source of information regarding the number of cellular services carriers nationwide is the data that the Commission collects annually in connection with the Telecommunications Relay Service (TRS) Worksheet.[7] That data shows that 792 companies reported that they were engaged in the provision of cellular services. Although it seems certain that some of these carriers have fewer than 1,500 employees, and because a cellular licensee may have several licenses, we are unable at this time to estimate with greater precision the number of cellular carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that, for purposes of our evaluations and conclusions in the SFRFA, all of the current cellular licensees are small entities, as that term is defined by the SBA.

*b. Estimates for Broadband PCS Licensees.* 17. As indicated in the FRFA, the broadband PCS spectrum is divided into six frequency blocks designated A through F. The FRFA provides a full explanation as to the definition of small business in the context of broadband PCS licensees, using the definition SBA approved, developed by the Commission for Blocks C–F, that a small business is an entity that has average gross revenues of less that $40 million in the three previous calendar years.[8] In addition, the SBA has approved a Commission definition (for Block F) of ''very small business'' which is an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[9] No small businesses within the SBA approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[10] However, not all licenses for Block F have been awarded. Because licenses were awarded only recently, there are few small businesses currently providing broadband PCS services. Based on this information, we conclude that the number of small broadband PCS licensees includes the 90 small business winning C Block bidders and the 93 qualifying bidders in the D, E, and F Blocks, for a total of 183 small broadband PCS providers as defined by the SBA and the Commission's auction rules.

*c. Estimates for SMR Licensees.* 18. The FRFA indicates that, pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small entity'' for geographic area 800 MHz and 900 MHz SMR licenses as firms that had average gross revenues of less than $15 million in the three previous calendar years. This regulation defining ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.[11] As the FRFA noted, we do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. The number of licensees cannot be estimated, because, although we know that there are a total of slightly more than 31,000 SMR licensees, one licensee can hold more than one license. We do know, however, that one of these firms has over $15 million in revenues. We assume, for purposes of our evaluations and conclusions in this SFRFA, that all of the remaining existing extended implementation authorizations are held

[6] 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812.

[7] Federal Communications Commission, CCB Industry Analysis Division, Telecommunication Industry Revenue: TRS Worksheet Data, Tbl. 1 (Average Total Telecommunication Revenue Reported by Class of Carrier) (December 1996) (TRS Worksheet).

[8] *See* Amendment of parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96–59, Report and Order, 61 FR 33859 (July 1, 1996).

[9] *Id.*

[10] FCC News, Broadband PCS, D, E, and F Block Auction Closes, No. 71744 (released Jan. 14, 1997).

[11] *See* Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896–901 MHz and the 935–940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89–553, Second Order on Reconsideration and Seventh Report and Order, 60 FR 48913 (September 21, 1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93–144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 61 FR 06212 (February 16, 1996).

by small entities, as that term is defined by the SBA.

19. Further, the Commission has no way of accurately determining which licensees would fall under the definition of ''covered carrier'' as expressed in the MO&O. The Commission still concludes that the number of geographic area SMR licensees affected by our action in this proceeding includes the 55 small entities who bid for and won geographic licenses in the 900 MHz SMR band. These 55 small entities hold a total of 245 licensees.

As of the adopted date of this decision, the auction for 800 MHz geographic area SMR licenses had not yet been completed. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis to estimate, moreover, how many small entities within the SBA's definition will win these licenses. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of our evaluations and conclusions in this SFRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

20. The Commission is submitting several burdens to the Office of Management and Budget for approval. First, Public Safety Answering Points (PSAP) who are willing to participate in Phase I and Phase II of E911 service must notify the covered carrier that they are capable of receiving and utilizing the data elements associated with the service and request the service. Also, cost recovery mechanisms must be in place as a prerequisite to the imposition of enhanced 911 service requirements upon covered carriers. In the MO&O, the Commission requires that covered carriers whose digital systems are not compatible with TTY calls must make every reasonable effort to notify current and potential subscribers that they will not be able to use TTYs to call 911 with digital wireless devices and services.

21. In addition, to monitor the progress of the wireless industry regarding TTY compatibility, the Commission requires that the signatories to the TTY Consensus Agreement file quarterly progress reports in this docket within ten days after the end of the quarter beginning January 1, 1998, until the quarter ending September 30, 1998. At the same time, the Commission grants the request of extension of time to file a Joint Status Report on TTY issues, that was due on October 1, 1997, and requires the signatories to the Consensus Agreement to file the Joint Status Report on TTY issues by December 30, 1997.

22. In the MO&O, the Commission also requires that covered carriers who offer dispatch service to customers and choose to comply with Commission rules by routing dispatch customer emergency calls through a dispatcher, rather than directly routing to the PSAP, must make every reasonable effort to explicitly notify the current and potential dispatch customers and their users that they will not be able to directly reach a PSAP by calling 911 and that, in the event of an emergency, the dispatcher should be contacted.

23. The MO&O, while revising the definition of ''pseudo-ANI,'' provides that the specific meaning assigned to the pseudo-ANI is determined by agreements, as necessary, between the telephone system originating the call, intermediate telephone systems handling and routing the call, and the destination telephone system. Additionally, in recognition of the difficulty involved in assigning wireless 911 calls to the appropriate PSAP based on location, the MO&O clarifies that the responsible local or State entity has the authority and responsibility to designate the PSAPs that are appropriate to receive wireless E911 calls, noting that this will require continued coordination between carriers and State and local entities. The MO&O lastly provides that covered carriers can request a waiver of the Phase I implementation schedule based on inability to transmit 10-digit telephone numbers and cell site information, but requires that any waiver request based on a LEC's capability must be accompanied by a deployment schedule for meeting the Phase I requirements.

V. Significant Alternatives and Steps Taken By Agency To Minimize Significant Economic Impact on Small Entities Consistent With Stated Objectives

24. This MO&O is adopted in response to petitions for reconsideration, including several filed by small businesses. After consideration of these petitions, the MO&O first modifies the rules by requiring covered carriers to transmit all 911 calls. Section 20.18(b) of the Commission's Rules, 47 CFR 20.18(b), as adopted in the R&O, required that carriers transmit 911 calls from all handsets which transmit ''code identifications'' and transmit all 911 calls, even those without code identification, if requested to do so by a PSAP administrator. Thirteen of the sixteen petitioners ask that the Commission reconsider this requirement. After a review of the arguments raised by the petitioners in opposition to the rule, the MO&O finds that the rules adopted in the *E911 First Report and Order* would impose unreasonable cost, delay, and administrative burdens on wireless carriers, and that, at least for the present, the most practical, least expensive and most efficient option is to require covered carriers to forward all 911 calls.

25. Three original petitioners request that the Commission modify or defer the implementation dates of rules requiring covered carriers to provide 911 access to people with hearing or speech disabilities through the use of TTYs with respect to digital wireless systems, due to technical incompatibility. Although the Commission decides against deferring the implementation date indefinitely until the industry standards bodies resolve all the technical issues, as these petitioners request, it temporarily suspends enforcement of the TTY requirement for digital wireless systems until October 1, 1998, subject to a notification requirement.

26. Also, in response to 5 petitions seeking reconsideration of the Commission's decision as to the wireless carriers to whom the rules apply particularly for covered SMRs, the MO&O narrows the definition of ''Covered SMRs'' for E911 purposes to include only those systems that offer real-time, two way switched voice service that is interconnected with the public switched network and utilize an in-network switching facility which enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. The Commission also decides to extend the modified definition to covered broadband PCS and cellular as well as SMR providers. We agree with the petitioners on this issue that the current rule could encompass SMR providers that primarily offer traditional dispatch services but also offer limited interconnection capability and that such traditional dispatch providers would have to overcome significant and potentially costly obstacles to provide 911 access. Furthermore, under the revised rules, the ''covered'' SMR systems that offer dispatch services to

customers may meet their 911 obligations either by providing customers with direct capability for 911 purposes, or alternatively, by routing dispatch customer emergency calls through a dispatcher, subject to a notification requirement.

27. The Commission also reviewed and rejected the Coast Guard's petition, which requested the Commission to apply E911 requirements to Mobile Satellite Services (MSS) and to issue a further notice of proposed rulemaking regarding the provision of emergency communications by MSS systems. In the MO&O, the Commission upholds its decision that MSS should be exempt from the 911 and E911 rules because adding specific regulatory requirements to MSS in this early stage of its growth may impede the development of service in ways that might reduce its ability to meet public safety needs. However, the Commission does urge the MSS industry and the public safety community to continue their efforts to develop and establish public safety standards along with international standards bodies.

28. Finally, although several petitioners asked the Commission to establish a specific cost recovery program (rather than the flexible alternative adopted in the *E911 First Report and Order,* the Commission declined to do so preferring to provide government entities with the option of keeping their existing cost recovery program in place or to create a cost recovery program that best suits the needs of all parties concerned in their locality.

**Report to Congress**

29. We will submit a copy of this Supplementary Final Regulatory Flexibility Analysis, along with the MO&O, in a report to Congress pursuant to 5 U.S.C. 801(a)(1)(A). A copy of this SFRFA will also be published in the **Federal Register**.

**Authority**

30. The Commission's action is taken pursuant to Sections 1, 4(i), 201, 303, 309, and 332 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151, 154(i), 201, 303, 309, 332.

**Ordering Clauses**

31. Accordingly, *it is ordered* that the Petitions for Reconsideration of the First Report and Order, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94–102, filed by parties listed in Appendix A of the full text of this decision, are granted in part, as provided in the text of the MO&O, and otherwise denied.

32. *It is further ordered* that Part 20 of the Commission's Rules is amended as set forth below.

33. *It is further ordered* that §§ 20.18(a), 20.18(c), and 20.18(g) of the Commission's Rules, 47 CFR 20.18(a), 20.18(c), 20.18(g), as amended by this MO&O as set forth below, and the foregoing provisions of this MO&O that pertain to sections 20.18(a), 20.18(c), and 20.18(g) of the Commission's Rules, shall become effective January 16, 1998. This action is taken on the basis of our finding that, because the amended provisions of §§ 20.18(a), 20.18(c), and 20.18(g) are substantive rules that have the effect of granting an exemption, the effective date of these provisions may occur less than 30 days before publication of the provisions, pursuant to Section 553(d)(1) of Title 5, United States Code.

34. *It is further ordered* that: (1) § 20.18(b) of the Commission's Rules, 47 CFR 20.18(b), as amended by this MO&O below; (2) the definition of ''designated PSAP'' in section 20.3 of the Commission's Rules, 47 CFR 20.3, as added by this MO&O below; and (3) the foregoing provisions of this MO&O that pertain to section 20.18(b) of the Commission's Rules, and to the definition of ''designated PSAP'' in § 20.3 of the Commission's Rules shall become effective January 16, 1998. This action is taken, pursuant to Section 553(d)(3) of Title 5, United States Code, on the basis of our finding that there is good cause that the effective date of these provisions should occur less than 30 days before publication of the provisions. The Commission's finding of good cause is based upon its finding that the rule change will serve the purpose of ''promoting the safety of life and property'' under Section 1 of the Communications Act and that the particular safety issues involved—extending the benefits of 911 services to as many wireless phone users as possible—are of sufficient importance to warrant making the rule requirements immediately effective upon publication in the **Federal Register**. In addition, the Commission notes that, since the adoption of the *E911 First Report and Order* in June 1996 there has been considerable confusion and uncertainty regarding the ability of covered carriers to comply with the provisions of § 20.18(b) of the Commission's Rules, as those provisions were initially prescribed in the *E911 First Report and Order.* This confusion and uncertainty were heightened by assertions made by the Wireless 911 Coalition regarding technical issues associated with requirements imposed by the rule. Although the decision of the Wireless Telecommunications Bureau in the *Stay Order* was an appropriate step in this case in light of the continuing pendency of these issues at the time the *Stay Order* was issued, it also resulted in a continuation of the confusion and uncertainty surrounding the question of whether all users of wireless services provided by covered carriers could expect and rely upon the fact that their 911 calls would go through to emergency service providers. Now that the Commission has resolved this issue by the action taken today, it can find no basis for any failure to end as quickly as possible this confusion and uncertainty regarding the obligations of covered carriers and the public safety expectations of the users of wireless services.

35. *It is further ordered* that the remaining rule amendments made by this MO&O and specified below shall become effective February 17, 1998.

36. *It is further ordered* that the Wireless Telecommunications Bureau is hereby delegated authority to grant an additional 3-month suspension of enforcement of section 20.18(c) of the Commission's Rules, 47 CFR 20.18(c), until January 1, 1999, with respect to wireless carriers who use digital wireless systems, upon reviewing the joint quarterly status reports on TTY compatibility with digital systems filed by the signatories to the TTY Consensus Agreement.

37. *It is further ordered* that the signatories to the TTY Consensus Agreement SHALL FILE a joint quarterly status report regarding TTY compatibility with digital systems within 10 days after the end of each calendar quarter during the period beginning January 1, 1998, and ending September 30, 1998, with the first report due April 10, 1998, as set forth in the foregoing provisions of this MO&O.

38. *It is further ordered* that the Request of an Extension of Time to File the Joint Status Report on TTY Issues, filed by the Cellular Telecommunications Industry Association on October 1, 1997, IS GRANTED, and that the signatories to the Consensus Agreement, the Personal Communications Industry Association, and Telecommunications for the Deaf, Inc. must file a Joint Status Report on or before December 31, 1997.

39. *It is further ordered* that the information collections contained in the rule amendments set forth below WILL BECOME EFFECTIVE following approval by the Office of Management and Budget. The Commission will

publish a document at a later date establishing the effective date.

40. *It is further ordered* that, the Director of the Office of Public Affairs shall send a copy of this MO&O including the Supplementary Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

**List of Subjects in 47 CFR Part 20**

Communications common carriers.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

**Rule Changes**

Part 20 of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for Part 20 continues to read as follows:

**Authority:** Sections 4, 251–2, 303, and 332, 48 Stat. 1066, 1062, as amended; 47 U.S.C. 154, 251–4, 303, and 332 unless otherwise noted.

2. Section 20.3 is amended by removing the definitions *Code Identification* and *Mobile Identification Number*; by adding a definition for *Designated PSAP*; and revising definitions for *Automatic Number Identification*, and *Pseudo Automatic Number Identification* to read as follows:

### § 20.3 Definitions

*Automatic Number Identification* (ANI). A system that identifies the billing account for a call. For 911 systems, the ANI identifies the calling party and may be used as a call back number.

* * * * *

*Designated PSAP.* The Public Safety Answering Point (PSAP) designated by the local or state entity that has the authority and responsibility to designate the PSAP to receive wireless 911 calls.

* * * * *

*Pseudo Automatic Number Identification* (Pseudo-ANI). A number, consisting of the same number of digits as ANI, that is not a North American Numbering Plan telephone directory number and may be used in place of an ANI to convey special meaning. The special meaning assigned to the pseudo-ANI is determined by agreements, as necessary, between the system originating the call, intermediate systems handling and routing the call, and the destination system.

* * * * *

3. Section 20.18 is revised to read as follows:

### § 20.18 911 Service.

(a) *Scope of section.* The following requirements are only applicable to Broadband Personal Communications Services (part 24, subpart E of this chapter), Cellular Radio Telephone Service (part 22, subpart H of this chapter), and Geographic Area Specialized Mobile Radio Services and Incumbent Wide Area SMR Licensees in the 800 MHz and 900 MHz bands (included in part 90, subpart S of this chapter). In addition, service providers in these enumerated services are subject to the following requirements solely to the extent that they offer real-time, two way switched voice service that is interconnected with the public switched network and utilize an in-network switching facility which enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls.

(b) *Basic 911 Service.* Licensees subject to this section must transmit all wireless 911 calls without respect to their call validation process to a Public Safety Answering Point, provided that ''all wireless 911 calls'' is defined as ''any call initiated by a wireless user dialing 911 on a phone using a compliant radio frequency protocol of the serving carrier.''

(c) *TTY Access to 911 Services.* Licensees subject to this section must be capable of transmitting 911 calls from individuals with speech or hearing disabilities through means other than mobile radio handsets, *e.g.*, through the use of Text Telephone Devices (TTY).

**Note to paragraph (c):** Enforcement of the provisions of this paragraph is suspended until October 1, 1998, in the case of calls made using a digital wireless system that is not compatible with TTY calls, provided that the licensee operating such a digital system shall make every reasonable effort to notify current and potential subscribers who use or may use such a system that they will not be able to make a 911 call over such system through the use of a TTY device.

(d) *Phase I enhanced 911 services.* (1) As of April 1, 1998, licensees subject to this section must provide the telephone number of the originator of a 911 call and the location of the cell site or base station receiving a 911 call from any mobile handset accessing their systems to the designated Public Safety Answering Point through the use of ANI and Pseudo-ANI.

(2) When the directory number of the handset used to originate a 911 call is not available to the serving carrier, such carrier's obligations under the paragraph (d)(1) extend only to delivering 911 calls and available calling party information to the designated Public Safety Answering Point.

**Note to paragraph (d):** With respect to 911 calls accessing their systems through the use of TTYs, licensees subject to this section must comply with the requirements in paragraphs (d)(1) and (d)(2) of this section, as to calls made using a digital wireless system, as of October 1, 1998.

(e) *Phase II enhanced 911 services.* As of October 1, 2001, licensees subject to this section must provide to the designated Public Safety Answering Point the location of all 911 calls by longitude and latitude such that the accuracy for all calls is 125 meters or less using a Root Mean Square (RMS) methodology.

(f) *Conditions for enhanced 911 services.* The requirements set forth in paragraphs (d) and (e) of this section shall be applicable only if the administrator of the designated Public Safety Answering Point has requested the services required under those paragraphs and is capable of receiving and utilizing the data elements associated with the service, and a mechanism for recovering the costs of the service is in place.

(g) *Dispatch service.* A service provider covered by this section who offers dispatch service to customers may meet the requirements of this section with respect to customers who utilize dispatch service either by complying with the requirements set forth in paragraphs (b) through (e) of this section, or by routing the customer's emergency calls through a dispatcher. If the service provider chooses the latter alternative, it must make every reasonable effort to explicitly notify its current and potential dispatch customers and their users that they are not able to directly reach a PSAP by calling 911 and that, in the event of an emergency, the dispatcher should be contacted.

[FR Doc. 98–708 Filed 1–15–98; 8:45 am]

BILLING CODE 6712–01–P

**DEPARTMENT OF TRANSPORTATION**

**Surface Transportation Board**

**49 CFR Part 1111**

**[STB Ex Parte No. 527 (Sub-No. 1)]**

## Expedited Procedures for Processing Simplified Rail Rate Reasonableness Proceedings

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Board amends its complaint and investigation regulations at 49 CFR part 1111 to reflect the adoption of *Simplified Rate Guidelines*.[1]

**EFFECTIVE DATE:** February 17, 1998.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Stilling, (202) 565–1567. (TDD for the hearing impaired: (202) 565–1695.)

**SUPPLEMENTARY INFORMATION:** In a Notice of Proposed Rulemaking (NPR) served September 24, 1997, and published in the **Federal Register** on September 26, 1997 (62 FR 50550), we proposed to include in our regulations a list of the information that a complainant should supply when seeking to challenge the reasonableness of a rail rate using the *Simplified Rate Guidelines*. We also proposed to determine within 50 days of the filing of a complaint whether the *Simplified Rate Guidelines* could be used in a particular case. We indicated, however, that we were not inclined at this time to adopt a general procedural schedule for processing rate complaints under the *Simplified Rate Guidelines* until we gained more experience using those guidelines. The Association of American Railroads (AAR) and the National Industrial Transportation League (NITL) filed comments in response to the NPR.

### Evidentiary Factors

Both AAR and NITL support the proposal to list in our regulations the nine evidentiary factors that a complaint seeking to use the *Simplified Rate Guidelines* should address.[2] AAR suggests that the regulations also explicitly require a complainant to provide the assumptions, calculations and workpapers on which the information on factors (6) through (9) is based.[3]

In our proposal, we assumed that a complainant would provide sufficient support for its responses to the evidentiary factors. Without adequate support, it would be difficult for us to determine whether use of the simplified guidelines should be permitted in a particular case. To ensure that adequate information is supplied to enable us quickly to decide the appropriateness of using the simplified guidelines, we will add a tenth factor requiring that ''the assumptions, calculations and any documentation necessary to support the responses to the above listed factors'' also be provided.

### Use of Simplified Procedures

In *Simplified Rate Guidelines,* slip op. at 38, we noted that a decision as to whether to apply the simplified guidelines or the more sophisticated constrained market pricing procedures (specifically the stand-alone cost test) for evaluating the reasonableness of a challenged rate needs to be determined at the outset of a case.[4] We also suggested that a reasonable time frame for making such a determination appeared to be within 45 days after the filing of the complaint. In its original comments responding to the Advanced Notice of Proposed Rulemaking (ANPR) in this proceeding, AAR complained that a 45-day time frame would be too tight, as it would provide a defendant railroad only two weeks to respond to a complainant's request to use the simplified guidelines. To afford the railroad more time to prepare its response and to allow that response to be filed together with the answer to the rate complaint, in the NPR we proposed a 50-day period instead. NITL asserts that the initial 45-day schedule is sufficient and that the additional five days are unnecessary.

We adopt the 50-day schedule proposed in the NPR. The additional five days will not unduly prolong the process. As indicated in the NPR, it should also alleviate some administrative burden by allowing a railroad to simultaneously answer the complaint and respond to the request for using the simplified guidelines, rather than requiring the filing of separate pleadings 5 days apart.

### Procedural Schedule

NITL expresses concern that, without a general procedural schedule, the processing of cases will be unduly delayed. NITL suggests that cases processed under the simplified guidelines be handled under the basic structure of the procedures used to process stand-alone cost cases.

We appreciate NITL's concern that these cases be expedited, but we believe that expedition can best be accomplished, at least at the outset, on a case-by-case basis. Absent experience processing cases under the *Simplified Rate Guidelines,* we cannot practically establish a general schedule to govern the filing of evidence for all cases. To facilitate the prompt establishment of appropriate procedural schedules in individual cases, the parties are expected to discuss, and if possible agree on, a procedural schedule at the conference of the parties that is to be convened no later than 12 days after the defendant files an answer to the complaint.[5] Under the regulations we are adopting, the parties are to file a report on the issues discussed at the conference within 19 days of the filing of an answer, and this report should include a proposed procedural schedule. Following receipt of this report, we will move quickly to establish the procedural schedule for the filing of evidence.[6]

### Waybill Access

In response to the ANPR, NITL suggested that our Rules of Practice governing the filing of a rate complaint cross reference the regulations at 49 CFR 1244.8 concerning access to the Waybill Sample. In its comments on the NPR, NITL repeated its cross-referencing suggestion. In light of NITL's position that a cross reference may ''avoid confusion that may create delays and subsequent difficulties in meeting the procedural schedule,'' we will include a new paragraph (d) in part 1111.1 referencing our regulation regarding access to the Waybill Sample.

The Board certifies that these rules will not have a significant economic effect on a substantial number of small entities. The rules should result in the

[1] *Rate Guidelines—Non-Coal Proceedings,* Ex Parte No. 347 (Sub-No. 2) (STB served Dec. 31, 1996), __ S.T.B. __ (1996), *pet. for judicial review pending sub nom. Association of Am. Railroads* v. *Surface Transp. Bd.,* No. 97–1020 (D.C. Cir. filed Jan. 10, 1997).

[2] The evidentiary factors are set forth in *Simplified Rate Guidelines,* slip op. at 37–38.

[3] Factors (6) through (9) are:

(6) The feasibility and anticipated cost of preparing a stand-alone cost presentation in the case.

(7) An estimate of the other costs to be incurred in pursuing the rate complaint, including preparing necessary jurisdictional threshold and market dominance evidence.

(8) The relief sought, including all reparations as well as the level and duration of any rate prescription.

(9) The present value of the relief sought.

[4] Constrained market pricing, including the stand-alone cost test, was adopted in *Coal Rate Guidelines—Nationwide,* 1 I.C.C.2d 520 (1985), *aff'd sub nom. Consolidated Rail Corp.* v. *United States,* 812 F.2d 1444 (3d Cir. 1987).

[5] Both AAR and NITL support the NPR proposal concerning a conference of the parties.

[6] 49 U.S.C. 10704(c)(2) requires us to decide the rate reasonableness issue within months after the close of the administrative record.

more expeditious processing of rail complaints using the simplified procedures.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

**List of Subjects in 49 CFR Part 1111**

Administrative practice and procedure, Investigations.

Decided: January 7, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

**Vernon A. Williams,**

*Secretary.*

For the reasons set forth in the preamble, title 49 chapter X, Part 1111 of the Code of Federal Regulations is amended as follows:

## PART 1111—COMPLAINT AND INVESTIGATION PROCEDURES

1. The authority citation for part 1111 is revised to read as follows:

**Authority:** 49 U.S.C. 721, 10704, and 11701.

2. Section 1111.1 is amended by revising the last two sentences of paragraph (a), adding paragraphs (a)(1) through (a)(10), and adding new paragraph (d) to read as follows:

### § 1111.1 Content of formal complaints; joinder.

(a) * * * In a complaint challenging the reasonableness of a rail rate, the complainant should indicate whether, in its view, the reasonableness of the rate should be examined using constrained market pricing or using the simplified standards adopted pursuant to 49 U.S.C. 10701(d)(3). If the complainant seeks to use the simplified standards, it should support this request by submitting, at a minimum, the following information:

(1) A general history of the traffic at issue, including how the traffic has moved in the past, how it currently moves, and how it can and will be moved in the future. This information should address not only the physical movement of the traffic, but the type and level of rates actually used. It should include all carriers (rail and nonrail) that have participated in the transportation of this traffic or could do so.

(2) The specific commodity description(s) for the traffic at issue, the shipping characteristics and requirements of the traffic, and the type of railroad cars required or used for the traffic.

(3) All origins, destinations, and origin-destination (O–D) pairs involved in the complaint, by commodity type.

(4) The amount of traffic involved (by commodity type), including total annual carloadings, average tons per car, number of carloads per shipment, and number of carloads per week or month.

(5) Total or average revenue per carload paid to the defendant railroad(s), by commodity type.

(6) The feasibility and anticipated cost of preparing a stand-alone cost presentation in the case.

(7) An estimate of the other costs to be incurred in pursuing the rate complaint, including preparing necessary jurisdictional threshold and market dominance evidence.

(8) The relief sought, including all reparations as well as the level and duration of any rate prescription.

(9) The present value of the relief sought.

(10) The assumptions, calculations and any documentation necessary to support the responses to the above listed factors.

* * * * *

(d) *Request for access to waybill data.* Parties needing access to the Waybill Sample to prepare their case should follow the procedures set forth at 49 CFR 1244.8.

3. Section 1111.8 is amended by removing the phrase ''section 1111.9(b)'' and adding the phrase ''§ 1111.10(b)'' in its place.

4. Section 1111.9 is redesignated as section 1111.10 and a new section 1111.9 is added to read as follows:

### § 1111.9 Procedural schedule to determine whether to use simplified procedures.

Absent a specific order by the Board, the following procedural schedule will apply in determining whether to grant a request under § 1111.1(a) to use the simplified procedures (with the remainder of the procedural schedule to be determined on a case-by-case basis):

Day 0—Complaint filed, discovery period begins.

Day 20—Defendant's answer to complaint and opposition to use of simplified procedures due.

Day 30—Complainant's response to use of simplified procedures due.

Day 50—Board's determination of whether simplified procedures should be used.

5. In newly designated § 1111.10, paragraph (a) is revised to read as follows:

### § 1111.10 Meeting to discuss procedural matters.

(a) *Generally.* In all complaint proceedings, other than those challenging the reasonableness of a rail rate based on stand-alone cost, the parties shall meet, or discuss by telephone, discovery and procedural matters within 12 days after an answer to a complaint is filed. Within 19 days after an answer to a complaint is filed, the parties, either jointly or separately, shall file a report with the Board setting forth a proposed procedural schedule to govern future activities and deadlines in the case.

* * * * *

[FR Doc. 98–1066 Filed 1–15–98; 8:45 am]

BILLING CODE 4915–00–P

# Proposed Rules

Federal Register
Vol. 63, No. 11
Friday, January 16, 1998

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

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### 12 CFR Part 10

**[Docket No. 98–01]**

**RIN 1557–AB62**

## Municipal Securities Dealers

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) proposes to revise its Municipal Securities Dealers regulation to remove unnecessary provisions. This change would not have any substantive effect on the operations of national banks, but would simplify the OCC's rule regarding bank municipal securities dealers (MSDs) by removing a redundant restatement of rules found elsewhere.

**DATES:** Comments must be received by March 17, 1998.

**ADDRESSES:** Comments should be directed to: Office of the Comptroller of the Currency, Communications Division, 250 E Street, SW, Washington, DC 20219, Attention: Docket No. 98–01. Comments will be available for public inspection and photocopying at the same location. In addition, comments may be sent by facsimile transmission to FAX number (202) 874–5274 or by electronic mail to regs.comments@occ.treas.gov.

**FOR FURTHER INFORMATION CONTACT:** Joe Malott, National Bank Examiner, Capital Markets (202) 874–5070; Donald Lamson, Assistant Director, Securities and Corporate Practices; or Ursula Pfeil, Attorney, Legislative and Regulatory Activities (202) 874–5090.

**SUPPLEMENTARY INFORMATION:**

## Background and Discussion of Proposal

Section 15B(b) of the Securities Exchange Act of 1934 (Exchange Act) (15 U.S.C. 78o-4(b)) created the Municipal Securities Rulemaking Board (MSRB) and mandated that the MSRB adopt rules that establish qualification criteria for municipal securities brokers or dealers and associated persons. To implement section 15B(b), the MSRB adopted Rule G–7 (Information Concerning Associated Persons) (Rule G–7).[1] Rule G–7 requires, among other things, that municipal securities principals and representatives associated with a bank MSD file with the bank either (a) Form MSD–4 (Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer) or (b) a similar form prescribed by the bank's primary regulator. A national bank MSD is in turn required by Rule G–7 to submit to the OCC the form that the bank's associated municipal securities principals and representatives file with it. Rule G–7 also requires bank MSDs to update information as necessary, to retain records for specified periods of time, and to file with the appropriate banking agency ''such of the information prescribed by [Rule G–7] as such * * * agency * * * shall by rule or regulation require.'' Rule G–7(g).

Shortly after the MSRB adopted Rule G–7, the OCC adopted part 10 in order to prescribe the information and forms that national bank MSDs are to submit. (42 FR 16813 (March 30, 1977)). Part 10 currently sets out the scope of the rule (§ 10.1); definitions used therein (§ 10.2); information about where and how to file the appropriate forms (§ 10.3); and requirements governing the submission and retention of Form MSD–4 and Form MSD–5 (Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer) (§ 10.4).

As explained in the following section-by-section analysis, much of current part 10 either is substantively identical to the requirements contained in Rule G–7 or is otherwise unnecessary.

[1] The MSRB rules may be obtained by contacting the Municipal Securities Rulemaking Board by telephone at (202) 223–9347 or by mail at 1150 18th Street, NW., Suite 400, Washington, DC 20036–3816.

## Section-by-Section Analysis

*Section 10.1 of Current and Proposed Rules*

This section identifies the entities and individuals covered by part 10. Section 10.1 of the proposed rule clarifies that subsidiaries of national banks are not covered by the rule. This clarification is consistent with MSRB Rule G–7, which states that ''bank dealers'' are to comply with the rules and requirements adopted by the appropriate bank regulatory agency. The term ''bank dealer'' is defined in Rule D–8 of the MSRB's rules to include ''a municipal securities dealer which is a bank or a separately identifiable department or division of a bank as defined in rule G–1 of the [Municipal Securities Rulemaking] Board.'' Subsidiaries of banks are not included in the definition of ''bank dealer,'' and are, therefore, governed directly by the MSRB's filing requirements. The proposed change to § 10.1 reflects this fact. It does not, however, affect the content of what these subsidiaries are to file or who regulates their municipal securities activities.[2]

*Section 10.2 of Current Rule*

The terms defined in current § 10.2 are not used in part 10 as proposed. Accordingly, this section is removed.

*Section 10.3 of Current Rule*

Section 10.3 provides information about the mechanics of filing the MSD–4 and MSD–5 forms with the OCC. This information is unnecessary in light of the filing instructions that accompany these forms. Therefore, the proposed rule removes this section.

*Section 10.4 of Current Rule/§ 10.2 of Proposed Rule*

Section 10.4(a)(1) of the current rule states that Form MSD–4 is an appropriate means of carrying out the purposes of Rule G–7(b). Two provisions in Rule G–7 make it appropriate for the proposed rule to retain a provision identifying which form national bank MSDs are to use and what information is to be submitted in order to comply with Rule G–7. First,

[2] Subsidiaries of national banks that engage in municipal securities activities must register with the NASD and are regulated by NASD Regulation, Inc., the subsidiary of NASD charged with regulating the securities industry and the Nasdaq Stock Market.

paragraph (b) of Rule G–7 states that ''in the case of a bank dealer a completed Form MSD–4 or similar form prescribed by the appropriate regulatory agency for such bank dealer, containing the foregoing information [i.e., the information listed in Rule G–7(b)(i)–(x)], shall satisfy the requirements of this paragraph [(b)].'' Given that Rule G–7(b) provides bank regulators the option of using a form other than Form MSD–4, there remains a need for the OCC to clarify which form national banks should use. Second, as previously noted, paragraph (g) of Rule G–7 states that bank MSDs are to file with their appropriate regulatory agency ''such of the information prescribed by this rule [i.e., Rule G–7] as such * * * agency * * * shall by rule or regulation require.'' Repealing all of part 10 arguably would create an unintended gap in the filing requirements for bank MSDs, because there would be no rule or regulation requiring national banks to file.

In light of paragraphs (b) and (g) of Rule G–7, the proposed rule retains a requirement, at § 10.2(a), stating that a national bank is to use Form MSD–4 to submit the information required by Rule G–7(b)(i)-(x) to be obtained from a person identified in § 10.1(b). Section 10.2(a) also states that a national bank receiving completed MSD–4 forms must submit these forms to the OCC before permitting any person to be associated with it as a municipal securities principal or a municipal securities representative. Should the MSRB amend Rule G–7 to remove the reference to rules or regulations issued by the banking agencies, the OCC will revisit the need for a continued reference to the MSRB rules in part 10.[3]

Section 10.4(a)(2) of the current rule repeats filing requirements found in Rule G–7 and, therefore, is removed.

Section 10.4(b) of the current rule instructs national bank MSDs regarding how they should proceed if a Form MSD–4 contains materially inaccurate or incomplete information. This section is unnecessary, given that paragraph (c) of Rule G–7 requires that the information required to be submitted must remain accurate and complete. A national bank MSD receiving updated information from an associated municipal securities representative or municipal securities principal is obligated pursuant to Rule G–7 to submit the amended information to the OCC in order to ensure that the individuals are properly registered. Accordingly, the proposed rule removes current § 10.4(b).

Current § 10.4(c) requires national bank MSDs to file Form MSD–5 within 30 days of terminating a person's association with the bank as a municipal securities representative or principal. This requirement does not appear in Rule G–7. In order to facilitate the effective supervision of MSD activity by national banks, the proposal retains the requirement, at proposed § 10.2(b), that a termination notice be submitted.

Finally, current § 10.4(d)(1) restates record retention requirements found in Rule G–7(e) while § 10.4(d)(2) states that the MSD–4 and MSD–5 forms are covered by section 32(a) of the Exchange Act (15 U.S.C. 78ff). These provisions in current § 10.4 are unnecessary and are, therefore, removed.

## Comments

The OCC invites general comments on all aspects of this proposal, including specific comments on the proposed changes.

## Regulatory Flexibility Act

It is hereby certified that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

As noted earlier, the OCC has only eliminated unnecessary provisions that appear in the current rule. This proposal will, therefore, reduce the regulatory burden on national banks, regardless of size. No new burden is added by the proposed changes.

## Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

## Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Act of 1995 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a proposal likely to result in a rule that includes a Federal mandate that may result in the annual expenditure of $100 million or more in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act requires an agency to identify and consider a reasonable number of alternatives before promulgating a proposal.

The OCC has determined that the proposal, if adopted, will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

## List of Subjects in 12 CFR Part 10

National banks, Reporting and recordkeeping requirements, Securities.

## Authority and Issuance

For the reasons set out in the preamble, the OCC proposes to revise part 10 of chapter I of title 12 of the Code of Federal Regulations as set forth below:

## PART 10—MUNICIPAL SECURITIES DEALERS

Sec.
10.1 Scope.
10.2 Filing requirements.

**Authority:** 5 U.S.C. 93a, 481, and 1818; 15 U.S.C. 78o–4(c)(5) and 78q–78w.

### § 10.1 Scope.

This part applies to:

(a) Any national bank, District bank, and separately identifiable department or division of either (collectively, a national bank) that acts as a municipal securities dealer, as that term is defined in section 3(a)(30) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(30)); and

(b) Any person who is associated or to be associated with a national bank in the capacity of a municipal securities principal or a municipal securities representative, as those terms are defined in Rule G–3 of the Municipal Securities Rulemaking Board (MSRB).[1]

### § 10.2 Filing requirements.

(a) A national bank shall use Form MSD–4 (Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer) for obtaining the information required by MSRB Rule G–7(b)(i)–(x) from a person identified in

[3] The Board of Governors of the Federal Reserve System (Board) and Federal Deposit Insurance Corporation (FDIC) recently published proposed amendments to each agency's MSD regulation. *See* 62 FR 15272 (March 31, 1997) (Board) and 62 FR 26994 (May 16, 1997) (FDIC). Both the Board and the FDIC propose to repeal their MSD rules altogether. However, both agencies intend for banks within their respective jurisdictions to continue filing the MSD–4 and MSD–5 forms with those agencies. Accordingly, the OCC, Board, and FDIC intend to impose substantively identical requirements on bank MSDs. The stylistic differences between the OCC's proposed rule and those of the Board and FDIC reflect the OCC's view that it is necessary and helpful to national bank MSDs for the OCC's rule to address those areas identified in Rule G–7 where bank dealers are to look to the rules of their primary regulator.

[1] The MSRB rules may be obtained by contacting the Municipal Securities Rulemaking Board at 1150 18th Street, NW., Suite 400, Washington, DC 20036–3816.

§ 10.1(b). A national bank receiving a completed MSD–4 form from a person identified in § 10.1(b) must submit this form to the OCC before permitting the person to be associated with it as a municipal securities principal or a municipal securities representative.

(b) A national bank must submit Form MSD–5 (Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer) to the OCC within 30 days of terminating a person's association with the bank as a municipal securities principal or municipal securities representative.

(c) Forms MSD–4 and MSD–5, with instructions, may be obtained by contacting the OCC at 250 E Street, SW., Washington, DC 20219, Attention: Bank Dealer Activities.

Dated: December 1, 1997.

**Eugene A. Ludwig,**

*Comptroller of the Currency.*

[FR Doc. 98–815 Filed 1–15–98; 8:45 am]

BILLING CODE 4810–33–P

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### 30 CFR Parts 56, 57, 62, 70, and 71

**RIN–AA53**

### Health Standards for Occupational Noise Exposure

**AGENCY:** Mine Safety and Health Administration (MSHA), Labor.

**ACTION:** Proposed rule; Extension of comment period.

**SUMMARY:** On December 23, 1997, MSHA published a notice soliciting comments on a report from the National Institute for Occupational Safety and Health (NIOSH) entitled ''Prevalence of Hearing Loss For Noise-Exposed Metal/Nonmetal Miners.'' This notice extends the original comment period on the report.

**DATES:** Submit written comments on the report on or before February 23, 1998.

**ADDRESSES:** Comments may be transmitted by electronic mail, fax, or mail. Comments by electronic mail must be clearly identified and sent to: comments@msha.gov. Faxed comments must be clearly identified and sent to: MSHA, Office of Standards, Regulations, and Variances, 703–235–5551. Send mail comments to: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203–1984. Commenters are encouraged to supplement written comments with computer files or disks.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, MSHA, Office of Standards, Regulations, and Variances, 703–235–1910.

**SUPPLEMENTARY INFORMATION:** On December 17, 1996, MSHA published a proposed rule in the **Federal Register** (61 FR 66348) revising its health standards for occupational noise exposure in coal and metal and nonmetal mines.

On December 16, 1997, MSHA published a notice in the **Federal Register** (62 FR 65777) announcing the availability of a report from NIOSH entitled ''Prevalence of Hearing Loss For Noise-Exposed Metal/Nonmetal Miners.'' The Agency further stated its intent to supplement the rulemaking record with this report and to make it available to interested parties upon request.

MSHA received several requests from the mining community that they be provided an opportunity to comment on the report. On December 23, 1997, MSHA published a notice in the **Federal Register** (62 FR 67013) allowing the public 30 days in which to review the report and submit comments.

In response to a request from the mining community, MSHA is extending this comment period an additional 30 days to February 23, 1998. Interested persons are encouraged to submit comments by this date.

Dated: January 12, 1998.

**J. Davitt McAteer,**

*Assistant Secretary for Mine Safety and Health.*

[FR Doc. 98–1139 Filed 1–15–98; 8:45 am]

BILLING CODE 4510–43–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 55

**[FRL–5950–9]**

### Outer Continental Shelf Air Regulations Consistency Update for California

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; consistency update.

**SUMMARY:** EPA is proposing to update a portion of the Outer Continental Shelf (OCS) Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 (the Act). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the Santa Barbara County Air Pollution Control District (Santa Barbara County APCD) and South Coast Air Quality Management District (South Coast AQMD) are the designated COAs. The intended effect of approving the OCS requirements for the above Districts, contained in the Technical Support Document, is to regulate emissions from OCS sources in accordance with the requirements onshore. The changes to the existing requirements discussed below are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

**DATES:** Comments on the proposed update must be received on or before February 17, 1998.

**ADDRESSES:** Comments must be mailed (in duplicate if possible) to: EPA Air Docket (Air-4), Attn: Docket No. A–93–16 Section XVI, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

*Docket:* Supporting information used in developing the rule and copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A–93–16 Section XVI. This docket is available for public inspection and copying Monday–Friday during regular business hours at the following locations:

EPA Air Docket (Air-4), Attn: Docket No. A–93–16 Section XVI, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE–131), Attn: Air Docket No. A–93–16 Section XVI, Environmental Protection Agency, 401 M Street SW, Room M–1500, Washington, DC 20460.

A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Christine Vineyard, Air Division (Air-4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1197.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On September 4, 1992, EPA promulgated 40 CFR part 55 [1], which

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and

established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to section 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent under section 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This proposed action is being taken in response to the submittal of rules by two local air pollution control agencies. Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

## II. EPA Evaluation and Proposed Action

In updating 40 CFR part 55, EPA reviewed the rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

A. After review of the rule submitted by Santa Barbara County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rule revision applicable to OCS sources for which the Santa Barbara County APCD is designated as the COA:

Rule 321 Solvent Cleaning Operations (Adopted 9/18/97)

B. After review of the rules submitted by South Coast AQMD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rules applicable to OCS sources for which the South Coast AQMD is designated as the COA.

1. *The following rules were submitted as revisions to existing requirements:*

Rule 102 Definition of Terms (Adopted 6/13/97)
Rule 301 Permit Fees (Adopted 5/9/97) except (e)(6) and Table IV
Rule 304 Equipment, Materials, and Ambient Air Analyses (Adopted 5/9/97)
Rule 304.1 Analyses Fees (Adopted 5/9/97)
Rule 306 Plan Fees (Adopted 5/9/97)
Rule 309 Fees for Regulation XVI Plans (Adopted 5/9/97)
Rule 701 Air Pollution Emergency Contingency Actions (Adopted 6/13/97)
Rule 1122 Solvent Degreasers (Adopted 7/11/97)
Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 8/8/97)
Rule 1168 Control of Volatile Organic Compound Emissions from Adhesive Application (Adopted 4/11/97)
Rule 1610 Old-Vehicle Scrapping (Adopted 5/5/97)
Rule 2000 General (Adopted 4/11/97)
Rule 2011 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur ($SO_X$) Emissions (Adopted 4/11/97)
Rule 2012 Requirement for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen ($NO_X$) Emissions (Adopted 4/11/97)

2. *The following new rule was submitted:*

Rule 2100 Registration of Portable Equipment (Adopted 7/1/97)

3. *The following rules were submitted but will not be included because either they do not apply to OCS Sources or are administrative/procedural rules:*

Rule 303 Hearing Board Fees (Adopted 5/9/97)
Rule 308 On-Road Motor Vehicle Mitigation Options Fees (Adopted 5/9/97)
Rule 311 Air Quality Investment Programs (AQIP) Fees (Adopted 5/9/97)
Rule 1421 Control of Perchloroethylene Emissions from Dry Cleaning Operations (Adopted 6/13/97)
Rule 2501 Air Quality Investment Program (Adopted 5/9/97)
Rule 2506 Area Source Credits for $NO_X$ and $SO_X$ (Adopted 4/11/97)

[2] Each COA which has been delegated the authority to implement and enforce part 55, will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14(c)(4).

## III. Administrative Requirements

### *A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

### *B. Regulatory Flexibility Act*

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

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 approval does not impose any new requirements, the

Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a 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*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

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

*D. Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

*E. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 17, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 55**

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, and Sulfur oxides.

Dated: December 22, 1997.

**Felicia Marcus,**

*Regional Administrator, Region IX.*

Title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows:

## PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

**Authority:** Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is proposed to be amended by revising paragraphs (e)(3)(ii)(F) and (e)(3)(ii)(G) to read as follows:

**§ 55.14 Requirements that apply to OCS sources located within 25 miles of states seaward boundaries, by state.**

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources.*

(G) *South Coast Air Quality Management District Requirements Applicable to OCS Sources* (Part I and Part II).

* * * * *

## Appendix to Part 55—[Amended]

3. Appendix A to CFR Part 55 is proposed to be amended by revising paragraph (b)(6) and (7) under the heading ''California'' to read as follows:

**Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State**

* * * * *

California

* * * * *

(b) Local requirements.

* * * * *

(6) The following requirements are contained in *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 102 Definitions (Adopted 4/17/97)
Rule 103 Severability (Adopted 10/23/78)
Rule 201 Permits Required (Adopted 4/17/97)
Rule 202 Exemptions to Rule 201 (Adopted 4/17/97)
Rule 203 Transfer (Adopted 4/17/97)
Rule 204 Applications (Adopted 4/17/97)
Rule 205 Standards for Granting Applications (Adopted 4/17/97)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207 Denial of Application (Adopted 10/23/78)
Rule 210 Fees (Adopted 4/17/97)
Rule 212 Emission Statements (Adopted 10/20/92)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter—Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration—Southern Zone (Adopted 10/23/78)
Rule 306 Dust and Fumes—Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate—Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/2/90)
Rule 316 Storage and Transfer of Gasoline (Adopted 4/17/97)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems—Southern Zone (Adopted 10/23/78)
Rule 321 Solvent Cleaning Operations (Adopted 9/18/97)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 7/18/96)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Crude Oil Production and Separation (Adopted 1/25/94) Rule 326 Storage of Reactive Organic Liquid Compounds (Adopted 12/14/93)
Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 330 Surface Coating of Miscellaneous Metal Parts and Products (Adopted 4/21/95)

Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 6/11/79)
Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines (Adopted 4/17/97)
Rule 342 Control of Oxides of Nitrogen ($NO_X$) from Boilers, Steam Generators and Process Heaters) (Adopted 4/17/97)
Rule 343 Petroleum Storage Tank Degassing (Adopted 12/14/93)
Rule 344 Petroleum Sumps, Pits, and Well Cellars (Adopted 11/10/94)
Rule 359 Flares and Thermal Oxidizers (6/28/94)
Rule 370 Potential to Emit—Limitations for Part 70 Sources (Adopted 6/15/95)
Rule 505 Breakdown Conditions Sections A., B.1., and D. only (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 6/15/81)
Rule 702 General Conformity (Adopted 10/20/94)
Rule 801 New Source Review (Adopted 4/17/97)
Rule 802 Nonattainment Review (Adopted 4/17/97)
Rule 803 Prevention of Significant Deterioration (Adopted 4/17/97)
Rule 804 Emission Offsets (Adopted 4/17/97)
Rule 805 Air Quality Impact Analysis and Modeling (Adopted 4/17/97)
Rule 1301 Part 70 Operating Permits—General Information (Adopted 4/17/97)
Rule 1302 Part 70 Operating Permits—Permit Application (Adopted 11/09/93)
Rule 1303 Part 70 Operating Permits—Permits (Adopted 11/09/93)
Rule 1304 Part 70 Operating Permits—Issuance, Renewal, Modification and Reopening (Adopted 11/09/93)
Rule 1305 Part 70 Operating Permits—Enforcement (Adopted 11/09/93)

(7) The following requirements are contained in *South Coast Air Quality Management District Requirements Applicable to OCS Sources*:

Rule 102 Definition of Terms (Adopted 6/13/97)
Rule 103 Definition of Geographical Areas (Adopted 1/9/76)
Rule 104 Reporting of Source Test Data and Analyses (Adopted 1/9/76)
Rule 108 Alternative Emission Control Plans (Adopted 4/6/90)
Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 3/6/92)
Rule 201 Permit to Construct (Adopted 1/5/90)
Rule 201.1 Permit Conditions in Federally Issued Permits to Construct (Adopted 1/5/90)
Rule 202 Temporary Permit to Operate (Adopted 5/7/76)
Rule 203 Permit to Operate (Adopted 1/5/90)
Rule 204 Permit Conditions (Adopted 3/6/92)
Rule 205 Expiration of Permits to Construct (Adopted 1/5/90)
Rule 206 Posting of Permit to Operate (Adopted 1/5/90)
Rule 207 Altering or Falsifying of Permit (Adopted 1/9/76)
Rule 208 Permit for Open Burning (Adopted 1/5/90)
Rule 209 Transfer and Voiding of Permits (Adopted 1/5/90)
Rule 210 Applications (Adopted 1/5/90)
Rule 212 Standards for Approving Permits (Adopted 8/12/94) except (c)(3) and (e)
Rule 214 Denial of Permits (Adopted 1/5/90)
Rule 217 Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
Rule 218 Stack Monitoring (Adopted 8/7/81)
Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 12/13/96)
Rule 220 Exemption—Net Increase in Emissions (Adopted 8/7/81)
Rule 221 Plans (Adopted 1/4/85)
Rule 301 Permit Fees (Adopted 5/9/97) except (e)(6) and Table IV
Rule 304 Equipment, Materials, and Ambient Air Analyses (Adopted 5/9/97)
Rule 304.1 Analyses Fees (Adopted 5/9/97)
Rule 305 Fees for Acid Deposition (Adopted 10/4/91)
Rule 306 Plan Fees (Adopted 5/9/97)
Rule 309 Fees for Regulation XVI Plans (Adopted 5/9/97)
Rule 401 Visible Emissions (Adopted 4/7/89)
Rule 403 Fugitive Dust (Adopted 2/14/97)
Rule 404 Particulate Matter—Concentration (Adopted 2/7/86)
Rule 405 Solid Particulate Matter—Weight (Adopted 2/7/86)
Rule 407 Liquid and Gaseous Air Contaminants (Adopted 4/2/82)
Rule 408 Circumvention (Adopted 5/7/76)
Rule 409 Combustion Contaminants (Adopted 8/7/81)
Rule 429 Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430 Breakdown Provisions, (a) and (e) only (Adopted 7/12/96)
Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 10/2/92)
Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 5/4/90)
Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 5/7/76)
Rule 441 Research Operations (Adopted 5/7/76)
Rule 442 Usage of Solvents (Adopted 3/5/82)
Rule 444 Open Fires (Adopted 10/2/87)
Rule 463 Organic Liquid Storage (Adopted 3/11/94)
Rule 465 Vacuum Producing Devices or Systems (Adopted 11/1/91)
Rule 468 Sulfur Recovery Units (Adopted 10/8/76)
Rule 473 Disposal of Solid and Liquid Wastes (Adopted 5/7/76)
Rule 474 Fuel Burning Equipment-Oxides of Nitrogen (Adopted 12/4/81)
Rule 475 Electric Power Generating Equipment (Adopted 8/7/78)
Rule 476 Steam Generating Equipment (Adopted 10/8/76)
Rule 480 Natural Gas Fired Control Devices (Adopted 10/7/77)
Addendum to Regulation IV (Effective 1977)
Rule 518 Variance Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.1 Permit Appeal Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.2 Federal Alternative Operating Conditions (Adopted 1/12/96)
Rule 701 Air Pollution Emergency Contingency Actions (Adopted 6/13/97)
Rule 702 Definitions (Adopted 7/11/80)
Rule 704 Episode Declaration (Adopted 7/9/82)
Rule 707 Radio—Communication System (Adopted 7/11/80)
Rule 708 Plans (Adopted 7/9/82)
Rule 708.1 Stationary Sources Required to File Plans (Adopted 4/4/80)
Rule 708.2 Content of Stationary Source Curtailment Plans (Adopted 4/4/80)
Rule 708.4 Procedural Requirements for Plans (Adopted 7/11/80)
Rule 709 First Stage Episode Actions (Adopted 7/11/80)
Rule 710 Second Stage Episode Actions (Adopted 7/11/80)
Rule 711 Third Stage Episode Actions (Adopted 7/11/80)
Rule 712 Sulfate Episode Actions (Adopted 7/11/80)
Rule 715 Burning of Fossil Fuel on Episode Days (Adopted 8/24/77)
Regulation IX—New Source Performance Standards (Adopted 4/8/94)
Rule 1106 Marine Coatings Operations (Adopted 1/13/95)
Rule 1107 Coating of Metal Parts and Products (Adopted 3/8/96)
Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)
Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/6/81)
Rule 1110.1 Emissions from Stationary Internal Combustion Engines (Adopted 10/4/85)
Rule 1110.2 Emissions from Gaseous and Liquid-Fueled Internal Combustion Engines (Adopted 12/9/94)
Rule 1113 Architectural Coatings (Adopted 11/8/96)
Rule 1116.1 Lightering Vessel Operations—Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121 Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 3/10/95)
Rule 1122 Solvent Degreasers (Adopted 7/11/97)
Rule 1123 Refinery Process Turnarounds (Adopted 12/7/90)
Rule 1129 Aerosol Coatings (Adopted 3/8/96)
Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 8/8/97)
Rule 1136 Wood Products Coatings (Adopted 6/14/96)
Rule 1140 Abrasive Blasting (Adopted 8/2/85)
Rule 1142 Marine Tank Vessel Operations (Adopted 7/19/91)

Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 5/13/94)
Rule 1146.1 Emission of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 5/13/94)
Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
Rule 1149 Storage Tank Degassing (Adopted 4/1/88)
Rule 1168 Control of Volatile Organic Compound Emissions from Adhesive Application (Adopted 4/11/97)
Rule 1171 Solvent Cleaning Operations (Adopted 9/13/96)
Rule 1173 Fugitive Emissions of Volatile Organic Compounds (Adopted 5/13/94)
Rule 1176 VOC Emissions from Wastewater Systems (Adopted 9/13/96)
Rule 1301 General (Adopted 6/28/90)
Rule 1302 Definitions (Adopted 5/3/91)
Rule 1303 Requirements (Adopted 5/10/96)
Rule 1304 Exemptions (Adopted 6/14/96)
Rule 1306 Emission Calculations (Adopted 6/14/96)
Rule 1313 Permits to Operate (Adopted 6/28/90)
Rule 1403 Asbestos Emissions from Demolition/Renovation Activities (Adopted 4/8/94)
Rule 1605 Credits for the Voluntary Repair of On-Road Vehicles Identified Through Remote Sensing Devices (Adopted 10/11/96)
Rule 1610 Old-Vehicle Scrapping (Adopted 5/5/97)
Rule 1701 General (Adopted 1/6/89)
Rule 1702 Definitions (Adopted 1/6/89)
Rule 1703 PSD Analysis (Adopted 10/7/88)
Rule 1704 Exemptions (Adopted 1/6/89)
Rule 1706 Emission Calculations (Adopted 1/6/89)
Rule 1713 Source Obligation (Adopted 10/7/88)
Regulation XVII Appendix (effective 1977)
Rule 1901 General Conformity (Adopted 9/9/94)
Rule 2000 General (Adopted 4/11/97)
Rule 2001 Applicability (Adopted 2/14/97)
Rule 2002 Allocations for Oxides of Nitrogen (NOx) and Oxides of Sulfur (SOx) Emissions (Adopted 2/14/97)
Rule 2004 Requirements (Adopted 7/12/96) except (1) (2 and 3)
Rule 2005 New Source Review for RECLAIM (Adopted 2/14/97) except (i)
Rule 2006 Permits (Adopted 10/15/93)
Rule 2007 Trading Requirements (Adopted 10/15/93)
Rule 2008 Mobile Source Credits (Adopted 10/15/93)
Rule 2010 Administrative Remedies and Sanctions (Adopted 10/15/93)
Rule 2011 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SOx) Emissions (Adopted 4/11/97)
Appendix A Volume IV—(Protocol for oxides of sulfur) (Adopted 3/10/95)
Rule 2012 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NOx) Emissions (Adopted 4/11/97)
Appendix A Volume V—(Protocol for oxides of nitrogen) (Adopted 3/10/95)
Rule 2015 Backstop Provisions (Adopted 2/14/97) except (b)(1)(G) and (b)(3)(B)
Rule 2100 Registration of Portable Equipment (Adopted 7/1/97)
XXX Title V Permits (Adopted 8/11/95)
XXXI Acid Rain Permit Program (Adopted 2/10/95)

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[FR Doc. 98–1137 Filed 1–15–98; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 440

**[WH–FRL–5937–6]**

## Withdrawal of Amendment to Ore Mining and Dressing Point Source Category; Effluent Limitations Guidelines and New Source Performance Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** EPA is withdrawing a proposed rule published in the **Federal Register** on February 12, 1996 (61 FR 5364). The proposed rule would have amended the applicability of certain effluent limitations guidelines and new source performance standards governing mines with froth-flotation mills to the Alaska-Juneau (A–J) gold mine project near Juneau, Alaska. Specifically, EPA proposed to exempt dewatered tailings produced by the proposed A–J mine and mill from effluent guidelines based on best practicable control technology (BPT) and best available control technology economically achievable (BAT), and from new source performance standards (NSPS) that appear at 40 CFR part 440, subpart J. EPA also proposed that a definition of ''dewatered tailings'' be added to 40 CFR part 440, subpart L.

**DATES:** This proposed rule is withdrawn as of January 16, 1998.

**ADDRESSES:** Supporting information used in developing the proposed rule, including studies prepared as part of a supplemental environmental impact statement prepared on the A–J project and comments received during the period for public comment on the proposed rule, are available for public inspection and copying at the EPA Water Docket at Headquarters, Waterside Mall, Room M2616, 401 M Street, SW., Washington DC 20460. For access to the Docket materials, call (202) 260–3027 between 9:00 a.m. and 3:30 p.m. for an appointment. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:**

For information concerning the proposed rule that is being withdrawn, you may contact Ronald G. Kirby, Address: Engineering and Analysis Division (Mail Code 4303), 401 M Street SW., Washington, DC 20460; Telephone Number: (202) 260–7168; Facsimile Number: (202) 260–7185 or by e-mail at kirby.ronald@epamail,epa.gov.

**SUPPLEMENTARY INFORMATION:** The proposed rule would have excluded mill tailings from the definition of process wastewater, thereby exempting dewatered tailings from the no discharge requirement and in turn allow consideration of other disposal technologies. Process wastewaters separated from the dewatered tailings and mine drainage wastewater would have continued to be covered by the Subpart. In addition, EPA solicited comments on whether other mine sites exhibit extreme environmental conditions such as those at the A–J mine site. This information was requested because the A–J mine site was the only site known to EPA that might warrant an exemption from the current Subpart J regulations as a result of extreme environmental conditions. In addition, EPA solicited information on the types of criteria that could be used to establish a more general exemption from the requirements of subpart J than that proposed for the A–J site, in the event that additional, potentially eligible sites were identified. However, very little information was submitted during the comment period that warrants further EPA review regarding any other site or criteria.

On January 14, 1997, Echo Bay Mines announced that it would terminate its development plans for the A–J mine project. EPA has concluded, in light of the closure of the A–J mine project and the lack of information about other mine sites exhibiting similarly extreme environmental conditions, that it is unnecessary to continue this rulemakig. Therefore, EPA withdraws the proposed rule.

Dated: December 15, 1997.

**Carol M. Browner,**

*Administrator.*

[FR Doc. 98–1115 Filed 1–15–98; 8:45 am]

BILLING CODE 6560–50–M

**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

**49 CFR Part 232**

**[FRA Docket No. PB–9, Notice No. 10]**

**RIN 2130–AB22**

## Two-Way End-of-Train Telemetry Devices and Certain Passenger Train Operations

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** FRA proposes to revise the regulations regarding the use and design of two-way end-of-train telemetry devices (two-way EOTs) to specifically address certain passenger train operations where multiple units of freight-type equipment, material handling cars, or express cars are part of a passenger train's consist. Trains of this nature are currently being operated by the National Railroad Passenger Corporation (Amtrak), and swift action is necessary to clarify and address the applicability of the two-way EOT requirements to these types of operations.

**DATES:** Written comments regarding this proposal must be filed no later than February 2, 1998. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

**ADDRESSES:** Written comments should identify the docket number and the notice number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Stop 10, Washington, D.C. 20590.

**FOR FURTHER INFORMATION CONTACT:** James Wilson, Motive Power and Equipment Division, Office of Safety, RRS–14, FRA, 400 Seventh Street, S.W., Stop 25, Washington, D.C. 20590 (telephone 202–632–3367), or Thomas Herrmann, Trial Attorney, Office of the Chief Counsel, RCC–12, FRA, 400 Seventh Street, S.W., Stop 10, Washington, D.C. 20590 (telephone 202–632–3178).

**SUPPLEMENTARY INFORMATION:**

### Background

On January 2, 1997, FRA published a final rule amending the regulations governing train and locomotive power braking systems at 49 CFR part 232 to add provisions pertaining to the use and design of two-way end-of-train telemetry devices (two-way EOTs). *See* 62 FR 278. The purpose of the revisions was to improve the safety of railroad operations by requiring the use of two-way EOTs on a variety of freight trains pursuant to 1992 legislation, and by establishing minimum performance and operational standards related to the use and design of the devices. *See* Pub. L. No. 102–365 (September 3, 1992); 49 U.S.C. 20141. In this document, FRA proposes to revise the regulations on two-way EOTs to specifically address certain passenger train operations where numerous freight-type cars, material handling cars, or express cars are part of a train's consist. Trains of this nature are currently being operated by the National Railroad Passenger Corporation (Amtrak), and prompt action is necessary to clarify and address the applicability of two-way EOT requirements to these types of operations.

The current regulations regarding two-way EOTs provide an exception from the requirements for ''passenger trains with emergency brakes.'' *See* 49 CFR 232.23(e)(9). The language used in this exception was extracted in total from the statutory exception contained in the statutory provisions mandating that FRA develop regulations addressing the use and operation of two-way EOTs or similar technology. *See* 49 U.S.C. 20141(c)(2). A review of the legislative history reveals that there was no discussion by Congress as to the precise meaning of the phrase ''passenger trains with emergency brakes.'' Consequently, FRA is required to effectuate Congress' intent based on the precise language used in that and the other express exceptions and based on the overall intent of the statutory mandate. *See* 49 U.S.C. 20141(c)(1)–(c)(5). Furthermore, any exception contained in a specific statutory mandate should be narrowly construed. *See Chesapeake & Ohio Ry.* v. *United States*, 248 F. 85 (6th Cir. 1918) *cert. den.*, 248 U.S. 580; *DRG R.R.* v. *United States*, 249 F. 822 (8th Cir. 1918); United States v. ATSF Ry., 156 F.2d 457 (9th Cir. 1946).

The intent of the statutory provisions related to two-way EOTs was to ensure that trains operating at a speed over 30 mph or in heavy grade territory were equipped with the technology to effectuate an emergency application of the train's brakes starting from both the front and rear of the train. The specific exceptions contained in the statute were aimed at trains (i) that do not operate within the express parameters or (ii) that are equipped or operated in a fashion that provides the ability to effectuate an emergency brake application that commences at the rear of the train without the use of a two-way EOT. *See* 49 U.S.C. 20141(c)(1)–(c)(5). Based on the intent of the statute and based upon a consistent and narrow construction of the specific language used by Congress in the express exceptions, FRA believes it is clear that Congress did not intend the phrase ''passenger trains with emergency brakes'' to constitute a blanket exception for all passenger trains. If that was Congress' intent, it would not have added the qualifying phrase ''with emergency brakes.'' In FRA's view, this language limits the specific statutory exception to passenger trains equipped with a separate emergency brake valve in each car throughout the train and, thus, to passenger trains possessing the ability to effectuate an emergency application of the train's brakes from the rear of the train. Therefore, passenger trains that include RoadRailers®, auto racks, express cars, or other similar vehicles that are designed to carry freight that are placed at the rear of the train, that are not equipped with emergency brake valves, would not fall within the specific statutory or regulatory exception as they are incapable of effectuating an emergency brake application that commences at the rear of the train. Further, FRA does not believe that Congress envisioned freight-type equipment being hauled at the rear of passenger trains when the specific exception was included in the statute.

FRA believes that Congress intended to except only those trains traditionally considered to be passenger trains, which would include passenger trains containing baggage and mail cars as these have consistently been considered passenger equipment with emergency brakes. However, passenger trains which operate with numerous inaccessible baggage or mail cars attached to the rear of the train that lack any ability to effectuate an emergency brake application from the rear of the train would, in FRA's view, fall outside the specific statutory and regulatory exception for ''passenger trains with emergency brakes.''

Subsequent to the issuance of the final rule and the period permitted for the submission of petitions for reconsideration of the rule, Amtrak raised concerns regarding the applicability of the final rule to some of its passenger train operations, particularly those which recently began to operate with numerous express, material handling cars, or RoadRailers® entrained in the consist. These concerns focused on FRA's enforcement guidance provided to its field inspectors, which stated that the exception for ''passenger trains with emergency brakes'' was intended to apply only to trains traditionally considered to be passenger trains, a category that would include passenger trains containing a limited

number of baggage and mail cars at the rear of the train. This guidance was based on the reasoning provided in the preceding discussion. Amtrak contended that FRA's interpretive guidance was an improper reading of the statutory and regulatory exception and did not adequately consider the superior braking capabilities of passenger equipment. Although FRA disagrees that its guidance was improper, FRA does agree that a closer examination of the applicability of the two-way EOT requirements to passenger trains needed to be performed in light of the superior braking ratios of passenger cars and the presence of emergency brake valves on the passenger cars in mixed train consists which provide certain safety assurances that are not present in traditional freight operations. Consequently, FRA agrees that the mixed passenger and ''express'' service currently being operated by Amtrak is unique and needs to be handled separately from traditional freight operations.

None of the consists proposed to be excepted raises any issue with respect to the ability to stop on grade using the rearmost available conductor's valve. The issue is the ability to stop within normal signal spacing after determining that there is a blockage in the train line. To gain a perspective on the stopping characteristics and safety implications of the ''mixed'' passenger train operations, FRA requested the Volpe National Transportation Systems Center (Volpe) to review the information and procedures used by Amtrak in developing various stopping distance calculations submitted to FRA. In addition, FRA requested that Volpe develop and analyze its own data regarding these types of ''mixed'' passenger trains. In making their calculations, both Volpe and Amtrak used variables of grade; train configuration; and the number, weight, and types of cars and locomotives expected to be used in these types of operations. Although all of the calculations were based on worse-case scenarios (e.g., the angle cock was assumed to be closed just behind the last car with an accessible emergency brake valve, and only friction braking—tread or disc brakes of locomotives and cars—was considered available to stop the train), all stops were achieved on the specified grade used in the calculation.

In making its calculations Volpe used a MathCad program to compute stopping distances. Volpe used the results of its calculations as a check against the results Amtrak had produced and submitted to FRA. Volpe concluded that Amtrak's procedures predicted longer (more conservative) stopping distances than the approach taken by Volpe. Amtrak's results were also compared to the requirements of the Amtrak Communication and Signal Department, Specification S–603, Curve 8, which is used to determine stopping distances for passenger equipment for signal block spacing. Curve 8 values for stopping distances are augmented by a factor of 25 percent to account for conditions which may impair brake performance. The absolute (actual) signal block spacing on the Northeast Corridor is actually greater than any of the stopping distances produced by either Volpe or Amtrak in their calculations. Therefore, stopping distances within established signal blocks should not be a problem. The process Amtrak used was sufficiently conservative so that predicted stopping distances were greater than would be experienced in reality. Nevertheless, FRA has worked with Amtrak to define further limitations adequate to ensure safety under identified worst-case conditions, and these limitations are set forth in this proposal.

**Need for 15-Day Comment Period**

As previously discussed, Amtrak currently operates a number of trains that include numerous material handling cars, express cars, auto racks, mail cars, and/or RoadRailer® equipment. These types of rolling equipment are either not equipped with emergency brake valves or, if equipped with such valves, they are not accessible to any member of the train crew. Amtrak expects that the operation of this type of rolling equipment will continue to grow and that many of its trains will eventually have a number of these vehicles in their consists. As explained earlier, FRA believes that a passenger train operated with this rolling equipment falls outside the statutory and regulatory exception to the two-way EOT requirement for ''passenger trains with emergency brakes,'' and thus, would be required under the existing rules to be equipped with an operative two-way EOT or alternative technology. However, FRA also recognizes the unique nature of these types of ''mixed'' operations and realizes that the safety assurances provided by the braking ratios and the presence of emergency brake valves at various locations through much of the consist on certain mixed passenger trains make requiring the use of a two-way EOT unnecessary.

As will be further clarified, FRA believes that swift action must be taken with regard to the provisions proposed in this document and that a lengthy comment period would be impracticable, unnecessary, and contrary to the public interest. A number of freight railroads are currently expressing concern and apprehension over permitting these ''mixed'' passenger trains to operate over their rails in light of FRA's above-mentioned interpretive guidance. In fact, at least one instance has occurred in which a ''mixed'' Amtrak train was detained for six hours by a freight railroad until a two-way EOT was applied because the freight railroad refused to permit the train to operate without the device. In addition, requiring Amtrak to acquire a number of two-way EOTs and operate under the provisions of the current regulatory scheme during a lengthy comment period would impose a substantial and unwarranted financial and operational burden without improving the safety of Amtrak operations. Furthermore, the proposals contained in this document include certain restrictions on the operation and make-up of certain passenger trains that are proposed for exception from the two-way EOT requirements, restrictions that FRA believes enhance the safety of those operations and that are not currently mandated.

The current situation mandates swift action to address both safety concerns and practical operating concerns. On the one hand, Amtrak is continuing to take delivery of express and other equipment and to build this line of business in order to close its operating deficit and to support continued intercity rail passenger service in a time of declining support from the public treasury. The public's interest in continued rail passenger service warrants reasonable flexibility to achieve this business objective. This development has corresponded with the implementation of two-way EOT requirements, rapidly complicating what appeared at the outset to be a relatively straightforward issue. Prior to the effective date of the rule, Amtrak had implemented a two-way EOT system on its AutoTrain, previously the only Amtrak train operated with any significant number of unoccupied cars at the rear of the train. Anticipating the need to equip other trains as the express business grows, Amtrak is equipping over 100 locomotives and deploying rear-end units at appropriate points along its lines where trains are built. Meanwhile, Amtrak has committed to FRA to operate cars with cables for head-end power transmission (such as mail and baggage cars) at the front of trains where practicable given constraints on loading and unloading, in order limit the number of cars to the rear of the train

that are beyond the last car with an accessible emergency valve. As noted above, passenger trains have historically operated with small numbers of unoccupied cars at the rear and without difficulty from the point of view of effective braking. However, as express service grows and Amtrak builds trains responsive to that growth (a phenomenon that is well underway), the danger increases that Amtrak's own internal policies for use of available two-way EOT systems may not be honored in the field through oversight. That is, having clear and certain Federal requirements becomes essential to public safety. FRA recognizes that previous interpretive guidance has been excessively narrow in relation to the safety issues presented by mixed consists.

In conclusion, FRA believes that prompt action is necessary in order to alleviate and avoid the concerns noted above. Consequently, FRA is issuing this NPRM with a comment period of only 15 days in order to quickly address the applicability of the two-way EOT requirements to ''mixed'' passenger train operations.

FRA wishes to make clear that if no substantive adverse comments are received on this proposal within the 15-day comment period, it will immediately issue a final rule containing the provisions of this proposal. Any comments received during this 15-day comment period will be fully considered prior to the issuance of a final rule. FRA intends for any final rule issued to take effect immediately upon publication. FRA is now soliciting comments on this proposal and will consider those comments in determining whether there is a need to amend the proposal at the final rule stage. It should be noted that, FRA will continue to exercise its enforcement discretion pursuant to 49 CFR part 209, Appendix A, and not require strict adherence to the current requirements by certain ''mixed'' passenger train operations in order to prevent further confusion within the industry regarding FRA's previous interpretative guidance while ensuring the continued safety of such operations.

**Section-by-Section Analysis**

FRA proposes to amend § 232.23 by revising paragraphs (e) and (g) and by adding a new paragraph (h) to specifically address passenger train operations that include using cars that do not have readily accessible emergency brake valves.

Paragraph (e) of § 232.23 contains a listing of the trains that are excepted from the two-way EOT requirements. FRA proposes conforming changes to paragraphs (e)(8) and (e)(9). In paragraph (e)(9) FRA proposes to retain the exception for passenger trains in which all of the cars in the train are equipped with a readily accessible emergency brake valve, as discussed in detail above.

In paragraph (e)(10) FRA proposes an exception to the requirements regarding two-way EOTs for passenger trains that operate with a car placed at the rear of the train that is equipped with an emergency brake valve readily accessible to a crew member in radio communication with the locomotive engineer of the train. FRA intends for this proposed exception to be applicable to passenger trains containing cars that do have a readily accessible emergency brake valve at the rear of the train. FRA believes this proposed exception is justified as it is virtually identical to the exception granted to freight trains with an occupied caboose (contained in paragraph (e)(3)) since it would permit an emergency application of brakes to be initiated from the occupied car at the rear of the passenger train.

In paragraph (e)(11) FRA proposes to except certain passenger trains that have cars placed at the rear of the train that do not have readily accessible emergency brake valves. This proposed exception is intended to recognize the safety of these types of trains if configured and operated in accordance with the provisions of this exception. The proposed exception contained in this subparagraph applies only to trains of twenty-four (24) cars or fewer. Therefore, passenger trains that have more than 24 cars in the consist and that do not fall within the exceptions contained in subparagraphs (e)(9) or (e)(10) would be required to be equipped with an operative two-way EOT device or alternative technology. It should be noted that FRA intends that each bogie used in RoadRailer® operation be counted as a car for purposes of calculating the number of cars in a passenger train consist. Furthermore, FRA proposes that a locomotive that is not designed to carry passengers should not be considered a car for purposes of these calculations.

Based on data and information submitted by Amtrak and reviewed by Volpe and based upon Volpe's independent analysis regarding passenger train braking ratios and the response of passenger train brakes, FRA believes that certain ''mixed'' passenger trains can be safely operated without being required to be equipped with a two-way EOT or alternative technology provided certain operational and train configuration restrictions are maintained. Paragraph (e)(11)(i) proposes that if the total number of cars in a passenger train consist is twelve (12) or fewer, a car located no less than halfway through the consist must be equipped with an emergency brake valve readily accessible to a crew member. For example, in a consist containing twelve (12) cars, the sixth (6th) car (or a car closer to the rear) in the consist must have a readily accessible emergency brake valve; likewise, in an eleven (11) car consist, the sixth (6th) car (or a car closer to the rear) must have a readily accessible emergency brake valve, since all half numbers will be rounded up. Paragraph (e)(11)(ii) proposes that if the total number of cars in a passenger train consist is from thirteen (13) to twenty-four (24), a car located no less than two-thirds (⅔) of the way through the consist (counting from the first car in the train) must be equipped with an emergency brake valve readily accessible to a crew member. For example, in a twenty-one (21) car consist, the fourteenth (14th) car (or a car closer to the rear) must have a readily accessible emergency brake valve.

In addition to these train-configuration requirements, paragraphs (e)(11)(iii) and (iv) contain certain proposed operating requirements that must be followed by any passenger train operating pursuant to this specific exception. Such trains would be required to have a train crew member occupy the rearmost car equipped with a readily accessible emergency brake valve and remain in constant radio communication with the locomotive engineer whenever the train is operating over a section of track with an average grade of two percent or higher over two continuous miles. FRA recommends that the engineer alert the train crew member approximately ten (10) minutes prior to descending the heavy grade, so the crew member will be in place at the crest of the grade. Furthermore, FRA proposes that the crew member not leave his or her position until the locomotive engineer advises that the train has traversed the grade. FRA believes that these proposed operational requirements will ensure that immediate action can be taken by a member of the train crew to effectuate an emergency brake application whenever the train is descending a heavy grade.

FRA proposes to amend paragraph (g) to indicate that the operating limitations that will be imposed on a passenger train required to be equipped with a two-way EOT that experiences an en route failure of the device will be

contained in paragraph (h). It should be noted that FRA intends that the criteria contained paragraph (g) to determine when a loss of communication between the front and rear units will be considered an en route failure will be applicable to passenger train operations.

Paragraph (h) contains the operational limitations and restrictions that are proposed to be placed on passenger trains that experience en route failures of two-way EOTs. Due to the time-sensitive nature of passenger operations, FRA believes that placing a speed restriction on these trains would not be the most effective method of handling en route failures of a device. Rather, FRA believes that other operating restrictions can be imposed to ensure the safety of these trains. FRA believes that in order to realize the benefits of a two-way EOT as contemplated by Congress, the device must be operative when the train descends a heavy grade. Therefore, FRA proposes that if a passenger train is required to be equipped with an operable device, it shall not be permitted to descend an average grade of two percent or more for two continuous miles until an operable device is installed or an alternative method of initiating an emergency brake application from the rear of the train is achieved. However, FRA further proposes that passenger trains that develop an en route failure of the two-way EOT may continue to operate over track that is not in heavy grade territory as long as a crew member occupies the rearmost car with a readily accessible emergency brake valve and remains in constant radio communication with the locomotive engineer. FRA also believes that since the train no longer has the safety assurances provided by a two-way EOT, the engineer must periodically test the braking characteristics of the train by making running brake tests. If the engineer suspects the brakes are not functioning properly, immediate action shall be taken to bring the train to a stop until corrections can be made. FRA also proposes that all en route failures of the devices must be corrected either at the next location where the necessary repairs can be made or at the next location where a required brake test of the train is to be conducted, whichever point the train arrives at first.

## Regulatory Impact

### *Executive Order 12866 and DOT Regulatory Policies and Procedures*

This proposal has been evaluated in accordance with existing policies and procedures. Because the requirements contained in this proposal clarify the applicability of the two-way EOT regulations to a specific segment of the industry and generally reduce the regulatory burden on these operators, FRA has concluded that this NPRM does not constitute a significant rule under either Executive Order 12866 or DOT's policies and procedures.

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. FRA certifies that this proposal does not have a significant impact on a substantial number of small entities. Because the requirements contained in this proposal clarify the applicability of the two-way EOT regulations to a specific segment of the industry and generally reduce the regulatory burden on these operators, FRA has concluded that there are no substantial economic impacts for small units of government, businesses, or other organizations.

### *Paperwork Reduction Act*

This proposal does not change any information collection requirements.

### *Environmental Impact*

FRA has evaluated this proposal in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. It has been determined that this proposal does not have any effect on the quality of the environment.

### *Federalism Implications*

This proposal does not have a substantial effect on the States, on the relationship between the national government on the States, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

## Request for Public Comments

FRA proposes to revise part 232 regarding two-way EOTs as set forth below. FRA is contemplating eventually moving the two-way EOT requirements related to passenger train operations to proposed part 238 containing the Passenger Equipment Safety Standards and would potentially seek the consultation of the working group currently involved with finalizing those standards on the issues addressed in this proposal. Consequently, FRA solicits comments on all aspects of this proposal whether through written submissions, participation in the passenger equipment working group, or both.

## List of Subjects in 49 CFR Part 232

Penalties, Railroad power brakes, Railroad safety, Two-way end-of-train devices.

## The Proposal

In consideration of the foregoing, FRA proposes to amend part 232, title 49, Code of Federal Regulations to read as follows:

## PART 232—RAILROAD POWER BRAKES AND DRAWBARS

1. The authority citation for part 232 is revised to read as follows:

**Authority:** 49 U.S.C. 20102, 20103, 20107, 20108, 20110–20112, 20114, 20133, 20141, 20301–20304, 20701–20703, 21301, 21302, 21304, and 21311; and 49 CFR 1.49 (c), (g), and (m).

2. Section 232.23 is amended by revising paragraphs (e) introductory text, (e)(8), and (e)(9); adding a new sentence to the beginning of the introductory text of paragraph (g) and adding and reserving paragraph (g)(2); and adding new paragraphs (e)(10), (e)(11), and (h) to read as follows:

**§ 232.23 Operations requiring use of two-way end-of-train devices; prohibition on purchase of nonconforming devices.**

* * * * *

(e) The following types of trains are excepted from the requirement for the use of a two-way end-of-train device:

* * * * *

(8) Trains that operate exclusively on track that is not part of the general railroad system;

(9) Passenger trains in which all of the cars in the train are equipped with an emergency brake valve readily accessible to a crew member;

(10) Passenger trains that have a car at the rear of the train, readily accessible to one or more crew members in radio contact with the engineer, that is equipped with an emergency brake valve readily accessible to such a crew member; and

(11) Passenger trains that have twenty-four (24) or fewer cars (not including locomotives) in the consist and that are equipped and operated in accordance with the following:

(i) If the total number of cars in a passenger train consist is twelve (12) or fewer, a car located no less than halfway through the consist (counting from the first car in the train) must be equipped with an emergency brake valve readily accessible to a crew member;

(ii) If the total number of cars in a passenger train consist is thirteen (13) to

twenty-four (24), a car located no less than two-thirds (⅔) of the way through the consist (counting from the first car in the train) must be equipped with an emergency brake valve readily accessible to a crew member;

(iii) Prior to descending a section of track with an average grade of two percent or greater over a distance of two continuous miles, the engineer of the train shall communicate with the conductor, to ensure that a member of the crew with a working two-way radio is stationed in the car with the rearmost readily accessible emergency brake valve on the train when the train begins its descent; and

(iv) While the train is descending a section of track with an average grade of two percent or greater over a distance of two continuous miles, a member of the train crew shall occupy the car that contains the rearmost readily accessible emergency brake valve on the train and be in constant radio communication with the locomotive engineer. The crew member shall remain in this car until the train has completely traversed the heavy grade.

* * * * *

(g) Except on passenger trains required to be equipped with a two-way end-of-train device (which are provided for in paragraph (h) of this section), en route failures of a two-way end-of-train device shall be handled in accordance with this paragraph. * * *

* * * * *

(2) [Reserved]

(h) A passenger train required to be equipped with a two-way end-of-train device that develops an en route failure of the device (as explained in paragraph (g) of this section) shall be operated in accordance with the following:

(1) The train shall not operate over a section of track with an average grade of two percent or greater over a distance of two continuous miles until an operable two-way end-of-train device is installed on the train;

(2) A member of the train crew will be immediately positioned in the car which contains the rearmost readily accessible emergency brake valve on the train and shall be equipped with an operable two-way radio that communicates with the locomotive engineer;

(3) The locomotive engineer shall periodically make running tests of the train's air brakes until the failure is corrected; and

(4) Each en route failure shall be corrected at the next location where the necessary repairs can be conducted or at the next location where a required brake test is to be performed, whichever is reached first.

3. Appendix A to Part 232, ''Schedule of Civil Penalties,'' is amended by revising the heading of the entry for § 232.23 and revising the entry for § 232.23(g) and adding an entry for § 232.23(h), to read as follows:

**Appendix—A to Part 232—Schedule of Civil Penalties**

* * * * *

| Section | Violation | Willful violation |
|---|---|---|
| * * * * * * * | | |
| 232.23 Operating standards: | | |
| * * * * * * * | | |
| (g) En route failure, freight | 5,000 | 7,500 |
| (h) En route failure, passenger | 5,000 | 7,500 |
| * * * * * * * | | |

Issued in Washington, DC, on January 12, 1998.

**Jolene M. Molitoris,**

*Administrator.*

[FR Doc. 98–1082 Filed 1–15–98; 8:45 am]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[I.D. 052097C]**

## Fisheries of the Northeastern United States; Decision on Petition for Rulemaking for Redistribution of the Summer Flounder Quota

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

**ACTION:** Decision on petition for rulemaking.

**SUMMARY:** NMFS announces its decision to not undertake the rulemaking requested in a petition submitted by the State of Connecticut, Commissioner of Environmental Protection (Connecticut). Connecticut petitioned the Secretary of Commerce (Secretary) to eliminate the current state-specific allocation of the commercial quota for summer flounder and implement one of two options specified in its place. The decision to deny the petition at this time is based on public comments received on this petition for rulemaking and on the Mid-Atlantic Fishery Management Council's (Council) and on the Atlantic States Marine Fisheries Commission's (Commission) decision to retain the current state-by-state quota system for summer flounder in Amendment 10 to the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP).

**FOR FURTHER INFORMATION CONTACT:** Gary C. Matlock, Ph.D., Director, Office of Sustainable Fisheries, (301) 713–2334, or Mark R. Millikin, (301) 713–2341.

**SUPPLEMENTARY INFORMATION:** On June 2, 1997 (62 FR 29694), NMFS published a notice of receipt of a petition for rulemaking submitted by Connecticut. The petition requested the Secretary to implement either a commercial allocation for summer flounder of two winter coastwide periods and a state-by-state summer period, or a coastwide allocation system for all three periods (two winter periods and a summer period). Connecticut further petitioned that any regulation implementing a state-by-state allocation system base the percent shares for each state upon landings data for the period 1990 through 1992. On behalf of the Secretary, NMFS considered the petition and comments received on the petition.

In considering this petition, NMFS also considered actions surrounding Amendment 10 to the FMP (Amendment 10) as they relate to the summer flounder quota. Amendment 10 was approved by NMFS on November 21, 1997 (62 FR 63872, December 3,

1997). In Amendment 10, the Council and Commission reconsidered the method by which the FMP allocates the quota for the summer flounder commercial fishery. All of the alternatives advocated by Connecticut in its petition were thoroughly considered by the Council in the development of Amendment 10. After considering the alternatives, the Council and Commission chose to maintain the status quo for the commercial summer flounder fishery and to retain the current state-by-state allocation. The Council and Commission noted during the discussions of Amendment 10 that many states have developed quota management systems to account for seasonal variations in abundance and in the size of the vessels that target summer flounder. With a coastwide system, as suggested in Connecticut's petition, states would lose that flexibility either during the winter or over the entire year.

No alternative system was identified that could provide the same level of equity as the current system, particularly between the northern and the southern states and between the small day boats and larger offshore vessels. The Council and Commission further noted that revising the years for the baseline allocation to 1990-92 was discussed at length during the development of Amendment 10. This time period was rejected under Amendment 10 because the shorter time period did not account adequately for historical participation in the fishery when summer flounder were more abundant and generally more available to the fishery along the entire coast. In light of the deficiencies noted in the alternatives, the Council and Commission decided to maintain the current state-by-state system.

Given that the Council and Commission thoroughly considered these proposed alternatives before proposing to retain the state-by-state allocation system and that the Council's actions were determined to be consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the national standards, and other applicable laws, NMFS could find no compelling justification for any action other than what was approved in Amendment 10.

Since the approved commercial quota allocation system complies with the Magnuson-Stevens Act and other applicable laws, NMFS believes that any changes to the allocation system are better handled through the FMP amendment process, which affords all members of the affected public an opportunity to comment on proposed measures. Connecticut participated in the Amendment 10 process as a member of the Commission but was not able to convince the Council or the Commission to make the modification it advocates.

In October 1997, the Commission attempted again to address the issue of different minimum fish sizes in various states over past years. The Commission conducted public hearings on a proposed Commission amendment (Amendment 11) in October 1997. Amendment 11 contained an analysis that would be used to redistribute the quota among the states. The redistribution would have been achieved for 1998 through the quota transfer provision already contained in the FMP. The Commission Board disapproved Amendment 11 during the annual meeting held on October 20–23, 1997. The disapproval noted that ''the Board could find no compromise sufficient to resolve the many regional differences invoked by this Amendment.''

**Comments and Responses**

A total of 74 letters; including 1 letter from the Commonwealth of Massachusetts, 1 letter from the State of New Hampshire, 1 letter from the State of Connecticut, 1 cosigned letter from Connecticut senators and from one representative, 1 letter from the Southern New England Fishermen's and Lobstermen's Association, and 33 individual form letters and 36 individual form postcards were received during the comment period for this action, which ended on August 1, 1997. Several of the letters contained comments on the FMP in general or offered suggestions for future management that are not within the scope of this action. Only comments relevant to the proposed petition for rulemaking that were received by NMFS prior to the close of business on the date specified as the close of comments were considered for this action.

*Comment*: The State of New Hampshire, the Commonwealth of Massachusetts, and several individuals support the petition. New Hampshire specifically agreed with Connecticut's point in the petition regarding the inequities in state quota shares based on historical summer flounder landings because some states had smaller minimum fish sizes than those implemented by Connecticut and by other states during the base period 1980–89. Connecticut Senators Lieberman and Dodd and Representative Gejdenson also feel that the current quota system did not take into consideration the stricter conservation requirements in some states, including in Connecticut. New Hampshire feels that the current system is flawed and in need of correction.

*Response*: NMFS believes the Council addressed the minimum fish size issue clearly in Amendment 10 to the FMP. The Council explained that landings data reflect minimum size regulations implemented in each of the states. Landings do not reflect the actual sizes of fish available to the gear, caught by commercial fishermen, and discarded dead. Hypothetically speaking, if more restrictive minimum size regulations had been implemented in southern states during those years, more fish would have been discarded dead and there would have been increased pressure on, and increased landings of, larger fish. As such, the availability of larger fish to the northern states could have been reduced. Consequently, the landings in the northern states could have been reduced. In reality, the fact that some northern states had a larger minimum size than some southern states reflects that fewer fish smaller than that length had been traditionally available to commercial fishermen in the northern states.

*Comment*: Connecticut Senators Lieberman and Dodd and Representative Gejdenson support a coastwide quota and uniform landing limits, as described in the petition.

*Response*: As with the response to the comment above, NMFS believes the Council addressed the coastwide quota and uniform trip limits issue clearly in Amendment 10 to the FMP. The Council and Commission determined, and NMFS agrees, that a coastwide quota would not provide the flexibility afforded under the state-by-state system. Since the inception of the current system, state personnel have developed and refined management systems to account for seasonal variations in abundance, as well as in the vessels that harvest summer flounder. In addition, the Council and Commission noted, and NMFS agrees, that it would be difficult to design a coastwide system that provides for an equitable distribution between the northern and southern participants, as well as between the smaller day boats and the larger offshore vessels. Uniform landing limits, it was noted, may not be suitable for all vessels, gears, or areas. For these reasons, the Council and Commission concluded that the coastwide systems proposed in Amendment 10, and again proposed by this petition, were found to not provide the same level of equity to all user groups and areas as the existing quota allocation system.

*Comment*: The Commonwealth of Massachusetts commented that, since the commercial quota allocation and management regimes for the related fisheries of summer flounder, scup, and black sea bass are all different, the state-by-state allocation system for summer flounder discriminates between residents of different states and violates national standard 4.

*Response*: That three fisheries have different allocation systems does not mean that one is discriminatory. Each system was implemented through an FMP amendment that was found consistent with all of the national standards. NMFS notes that to recognize the varying levels of historical participation in each of the states is not inherently discriminatory. Because each state participated in a fishery to varying degrees, each state receives a different portion of the whole, reflecting its relative level of historical participation. The same basis for distribution is employed for all states. Thus, there is no discrimination between residents of different states.

*Comment*: The State of Connecticut feels that the current commercial quota management system violates (1) national standard 1 (overfishing) because it has not prevented overfishing, (2) national standard 5 (efficiency) because it does not consider efficiency in the utilization of the resource, (3) national standard 7 (minimize costs) because it fails to minimize costs, and (4) national standard 10 (safety at sea) because fishermen travel to states with the most favorable trip limit, increasing the risk of mishap or disaster at sea. The Commonwealth of Massachusetts also feels that the current state-specific commercial quota system violates national standard 1 because it has been unsuccessful in reducing fishing mortality although it has been implemented for 5 years. Massachusetts urges NMFS to develop the regulations suggested in the petition since, as the current system has not reduced fishing mortality, quotas are likely to get smaller. Lastly, Massachusetts notes that the current system forces fishermen to travel to ports that are open to landings or that have higher trip limits, therefore increasing the risk to vessel and life at sea, in violation of national standard 10 and negatively impacting New England ports, which lose those landings while other ports benefit from them.

*Response*: Since Amendment 10 to the FMP contemplated alternatives to the commercial quota allocation method, the Council was required to review all alternatives for consistency with the national standards. As with the minimum fish size issue, NMFS believes the Council addressed this issue adequately and clearly in that document. The points of those discussions are reiterated here.

National standard 1 - The most recent stock assessment, completed in August 1997, indicates that the summer flounder stock is at a medium level of historical (1968–96) abundance and is overexploited. The fishing mortality rate (F) estimated for 1996 was 1.0 (an exploitation rate of 58 percent). While this estimate of fishing mortality is above the overfishing definition ($F_{max}$ = 0.24), it is significantly below the peak fishing mortality rate estimated for 1992 (F = 2.1). More importantly, the spawning stock biomass estimate for 1996 indicated the highest level since 1983. Additionally, the age structure is improving, with 34 percent of the biomass age 2 and older in 1996, compared with 17 percent in 1992. The size of the stock older than age 2 is an important indicator of the stock health, as it may reflect more accurately the number of successful spawners. While the stock is showing signs of improvement, the improvement is not occurring at as high a rate as anticipated by managers. NMFS notes that quota overages and unaccounted for mortality (underreporting and/or discard) are more likely to explain the slow recovery than the manner in which the quota is allocated. Overall, the management scheme is allowing a stock rebuilding and a progression toward an end of overfishing.

National standard 5 - The Council and Commission have developed a system that is intended to operate at the lowest possible cost with regard to effort, administration, and enforcement, given the objectives of the FMP. NMFS has determined that the state-by-state allocation system makes efficient use of fishery resources and is, therefore, consistent with national standard 5.

National standard 7 - Amendment 10, a joint document from both the Council and Commission, contains management measures that will be implemented by the Commission as part of its interstate management process. These measures, called compliance criteria, include a requirement that states document all summer flounder commercial landings in their states. This will aid in the elimination of double counting of any landings and, therefore, help keep enforcement costs down, as much effort is spent tracking down landings in order to maintain the integrity of the quota. Such costs are independent of the allocation system. Under any other scenario proposed in this petition, costs are still incurred with regard to quota monitoring, enforcement of trip limits, and seasons.

National standard 10 - The state-by-state quota allocation system for summer flounder is not inconsistent with national standard 10. Many of the New England vessels are permitted to land in neighboring states. These and other vessels have traditionally traveled long distances to fish for and land summer flounder, so risks at sea cannot be ascribed solely to behavior resulting from a state-by-state quota allocation. The state-by- state quota system does not require a vessel to travel to distant ports, and an individual vessel operator must weigh the benefits of landing in a distant port versus the costs associated with that travel with regard to steaming time, fuel consumption, weather, and other factors.

*Comment*: Connecticut's petition stated that, should the alternative embracing a state-by-state summer allocation be implemented, the percent shares for each state should be based upon landings data for the period 1990 through 1992.

*Response*: When the quota allocation system was developed, the Council and Commission reviewed the history of the fishery and recommended a 10-year time frame as the appropriate historical period upon which quotas would be based. This decision was discussed thoroughly. While proposals were made to shorten the period to as little as 3 years, it was recognized that short-term variations in landings did occur and that quotas based on a short time series would penalize one segment of the fishery while granting others what was considered an excessive share. The states, through the Commission, approved the 10-year time period and the method of allocating the quota.

*Comment*: One form letter requests the Secretary to use his office to assure that Council plans comply with the requirements of the Magnuson-Stevens Act which, the letter states, the plans do not currently do.

*Response*: The Magnuson-Stevens Act requires that any management plan prepared, and any regulation promulgated to implement any such plan, shall be consistent with the 10 national standards for fishery conservation and management, other provisions of the Magnuson-Stevens Act, and other applicable laws. Indeed, any Council regulatory submission adopted by NMFS has been thoroughly reviewed for its consistency with every applicable legal requirement. There is no exception to this requirement.

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

Dated: January 9, 1998.

**David L. Evans,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 98–1154 Filed 1–15–98; 8:45 am]

BILLING CODE 3510–22–F

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 971231319–7319–01; I.D. 112697A]**

**RIN 0648–AK09**

## Fisheries of the Exclusive Economic Zone Off Alaska; Maximum Retainable Bycatch Percentages

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes a regulatory amendment to separate shortraker rockfish and rougheye rockfish (SR/RE) from the aggregated rockfish bycatch species group and reduce maximum retainable bycatch (MRB) percentages for SR/RE in the Aleutian Islands Subarea (AI) groundfish fisheries. This action is necessary to slow the harvest rate of SR/RE thereby reducing the potential for overfishing. This action is intended to further the objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP).

**DATES:** Comments must be received at the following address by February 17, 1998.

**ADDRESSES:** Comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for this action may be obtained from the same address or by calling the Alaska Region, NMFS, at 907–586–7228.

**FOR FURTHER INFORMATION CONTACT:** Alan Kinsolving, 907–586–7228.

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

Regulations at 50 CFR 679.20(e) establish MRB percentages for groundfish species or species groups that are closed to directed fishing. The MRB amount is calculated as a percentage of the species on bycatch status relative to the amount of other species retained onboard the vessel that are open for directed fishing. MRB percentages serve as a management tool to slow down the harvest rates of bycatch species by limiting the amount that can be retained on board a vessel. By not placing the bycatch species on ''prohibited'' status, thereby prohibiting all retention, MRB's also serve to minimize regulatory discard of bycatch species when they are taken incidental to other directed fisheries. MRB percentages reflect a balance between the need to slow harvest rates while at the same time, minimizing the potential for undesirable discard. Although MRB percentages limit the incentive to target on a bycatch species, fishermen can ''top off'' their retained catch with these species up to the MRB amount by deliberately targeting the bycatch species.

At its June 1997 meeting, the Council requested that NMFS initiate a regulatory amendment to reduce the MRB percentages for SR/RE to reduce harvest rates of SR/RE in the groundfish fisheries, thereby reducing the potential for overfishing and minimizing industry incentives to top off retained catch with SR/RE. Based on the analysis presented to the Council at its September 1997 meeting, the Council recommended that SR/RE be separated from the aggregated rockfish bycatch species group, and that MRB percentages for SR/RE in the AI be reduced to 7 percent relative to deep-water complex species (primarily POP) and to 2 percent relative to shallow-water complex species (primarily Atka mackerel). The MRB percentage relative to arrowtooth flounder would remain at 0 percent. Further justification for these MRB adjustments is discussed below.

### Separation of SR/RE From Aggregated Rockfish

MRB percentages are established for aggregate rockfish species that are closed to directed fishing. Rockfish species were aggregated because of concerns that separate MRB percentages for each rockfish TAC category would increase the overall amount of rockfish that could be retained and increase incentives to vessel operators to ''top off'' their retained catch of target species with rockfish. As part of the aggregate rockfish MRB, the combined amounts of rockfish on bycatch status must not exceed specified percentages of other retained species that are open to directed fishing. These percentages are 15 percent relative to deep-water complex species (other rockfish species, sablefish, Greenland turbot, and flathead sole) and 5 percent relative to shallow-water complex species (Atka mackerel, pollock, Pacific cod, yellowfin sole, rock sole, ''other flatfish'', squid, and other species).

SR/RE are highly valued, but amounts available to the commercial fisheries are limited by a relatively small TAC amount that is fully needed to support bycatch needs in other groundfish fisheries. As a result, the directed fishery for SR/RE typically is closed at the beginning of the fishing year. Nonetheless, bycatch amounts of SR/RE can exceed TAC and approach the overfishing level. In 1997, the SR/RE bycatch in the Pacific ocean perch (POP) and Atka mackerel trawl fisheries (778 mt and 162 mt, respectively) exceeded the acceptable biological catch and caused overfishing concerns. This resulted in the closure of these and other trawl fisheries in the AI, as well as the hook-and-line gear fisheries for Pacific cod and Greenland turbot. Although closure of the individual fishing quota (IFQ) fisheries for AI sablefish and halibut was a possibility, SR/RE bycatch did not reach the overfishing level and those fisheries remained open.

Based on the discussion above, NMFS proposes to remove SR/RE from the aggregated rockfish bycatch species group and establish an SR/RE bycatch species group for the AI.

### Reduction of the SR/RE MRB Percentages

The majority of SR/RE bycatch is taken in the POP and Atka mackerel fisheries. Based on data reported by the industry since 1995, the amount of retained SR/RE bycatch in the POP fishery has ranged from 4.5 to 5.7 percent. During the same time period, the retained amount of SR/RE in the Atka mackerel fishery relative to other retained catch has ranged from 0.08 to 0.2 percent.

Analyses of 1995–1996 observer data from observed hauls in the AI Atka mackerel and POP fisheries indicate that most SR/RE bycatch is taken in the minority of hauls. In the Atka mackerel fishery during 1995 and 1996, only 2 percent of observed hauls had bycatch

rates higher than 2 percent, but those hauls were responsible for 50 percent of the observed SR/RE bycatch. In the POP fishery during 1995, only 10 percent of the observed hauls exceeded a bycatch rate of 7 percent but these hauls were responsible for 50 percent of the SR/RE bycatch. In the 1996 POP fishery, 29 percent of the observed hauls exceeded a bycatch rate of 7 percent, but were responsible for 78 percent of the SR/RE bycatch.

To the extent that these high-bycatch hauls represent topping off, a reduction in MRB percentages would limit the incentive to do so and reduce the risk of approaching the overfishing level for SR/RE stocks. At the same time, the proposed MRB percentages would be at a level that is unlikely to increase regulatory discards.

**Classification**

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant impact on a substantial number of small entities. NMFS prepared a regulatory impact review (RIR) that describes the impact this proposed rule, if adopted, would have on small entities.

The Small Business Administration has defined all fish-harvesting or hatchery businesses that are independently owned and operated, not dominant in their field of operation, with annual receipts not in excess of $3,000,000 as small businesses. Additionally, seafood processors with 500 employees or fewer, wholesale industry members with 100 employees or fewer, not-for-profit enterprises, and government jurisdictions with a population of 50,000 or less are considered small entities. NMFS has determined that a ''substantial number'' of small entities would generally be 20 percent of the total universe of small entities affected by the regulation. A regulation would have a ''significant economic impact'' on these small entities if it reduced annual gross revenues by more than 5 percent, increased total costs of production by more than 5 percent, resulted in compliance costs for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities, or would be likely to cause approximately 2 percent of the affected small business to go out of business. NMFS assumes that catcher vessels participating in the Alaska groundfish fisheries are ''small entities'' for purposes of the Regulatory Flexibility Act (RFA).

In 1996, 213 vessels participated in the Aleutian Islands groundfish fisheries all of which would be affected by this rule. Of these, 140 vessels (66 percent) were catcher vessels and would be considered small entities by NMFS. One hundred percent of these small entities would be affected by this rule. Thus, this rule affects a ''substantial number of small entities.''

This rule could have a variety of different impacts on different entities depending on each small entity's previous fishing history. For vessels that have never landed SR/RE, this rule's impacts would be strictly beneficial in that the only impacts would be that there would be less likelihood of other fisheries in which those vessels operate being closed due to excessive SR/RE bycatch. For entities that have historically landed SR/RE, this rule's impact could vary as well. NMFS' data indicate that most vessels typically harvest SR/RE at a rate substantially below this rule's new MRB of 7 percent. Vessels in the POP fishery typically harvest SR/RE at a rate ranging from 4.5 to 5.7 percent. Vessels in the Atka mackerel fishery typically have SR/RE bycatch rates of .08 to 0.2 percent. Forty-eight small entities landed SR/RE in 1996. For those vessels whose SR/RE bycatch rates are already under 7 percent, this rule's impacts will be only positive as well. However, it is possible that one or more of these 48 small entities landed SR/RE at a rate greater than 7 percent. For any such vessel, this rule could result in an economic loss.

In 1996, small entities took only 0.2 percent of the total SR/RE that was landed. Using an assumed exvessel price of $1.10 per pound, the total value of the 1996 SR/RE retained catch is estimated at $1.8 million, of which less than $3,600 was taken by the 48 small entities (34 percent of the total universe of small entities, a substantial number). Data is not available on how many, if any, small entities have historically landed SR/RE at a bycatch rate greater than 7 percent. However, if NMFS assumes that all 48 small entities retained bycatch at the maximum rate of 14 percent, then the most any vessel could stand to lose as a result of this rule would be 50 percent (because the new maximum retainable level, 7 percent, is one-half of the current maximum retainable level, 14 percent) of $3,600, divided by 48: $37.50 per vessel. If only 20 percent of the affected small entities (28 vessels) landed SR/RE at a rate higher than 7 percent, the greatest economic loss they could be expected to suffer would be $64.30. If only 10 percent of the small entities landed over 7 percent of SR/RE, the most these vessels could expect to lose as a result of this rule would be $129 each. Based on the total value of the SR/RE landed by small entities, NMFS can conclude that very few, if any, small entities would be likely to experience a reduction in gross annual income of greater than 5 percent or be forced to go out of business because of this rule. In addition, any losses would be offset for these vessels to the extent that other lucrative fisheries such as POP and Sitka mackerel would not risk early closure due to excessive SR/RE bycatch.

Also, data indicate that this rule is not likely to result in compliance costs proportionally higher for small entities than for large entities. Annual compliance costs are not likely to increase production costs by more than 5 percent. Compliance costs as a percent of sales for small entities are not likely to be greater than 10 percent of sales for large entities.

Thus although NMFS is not able to ascertain the exact number of small entities that would experience negative economic impact as a result of this rule, NMFS is able to conclude that substantially fewer than 20 percent of the affected small entities would experience any negative impact at all, and that in no case would this rule result in a significant impact on a substantial number of small entities.

As a result, a regulatory flexibility analysis was not prepared. A copy of the EA/RIR is available from NMFS (See **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 12, 1998.

**David L. Evans,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

## PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

2. In part 679, Table 11 is revised to read as follows:

TABLE 11.—BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA RETAINABLE PERCENTAGES

| | Bycatch Species [1] | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Pollock | Pacific cod | Atka mackerel | Arrowtooth | Yellowfin sole | Other flatfish | Rocksole | Flathead sole | Greenland turbot | Sablefish | Shortraker rougheye (AI) | Aggregated rockfish [2] | Squid | Other species |
| Basis species: | | | | | | | | | | | | | | |
| Pollock | [3] na | 20 | 20 | 35 | 20 | 20 | 20 | 20 | 1 | 1 | 2 | 5 | 20 | 20 |
| Pacific cod | 20 | [3] na | 20 | 35 | 20 | 20 | 20 | 20 | 1 | 1 | 2 | 5 | 20 | 20 |
| Atka mackerel | 20 | 20 | [3] na | 35 | 20 | 20 | 20 | 20 | 1 | 1 | 2 | 5 | 20 | 20 |
| Arrowtooth | 0 | 0 | 0 | [3] na | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Yellowfin sole | 20 | 20 | 20 | 35 | [3] na | 35 | 35 | 35 | 1 | 1 | 2 | 5 | 20 | 20 |
| Other flatfish | 20 | 20 | 20 | 35 | 35 | [3] na | 35 | 35 | 1 | 1 | 2 | 5 | 20 | 20 |
| Rocksole | 20 | 20 | 20 | 35 | 35 | 35 | [3] na | 35 | 1 | 1 | 2 | 5 | 20 | 20 |
| Flathead sole | 20 | 20 | 20 | 35 | 35 | 35 | 35 | [3] na | 35 | 15 | 7 | 15 | 20 | 20 |
| Greenland turbot | 20 | 20 | 20 | 35 | 20 | 20 | 20 | 20 | [3] na | 15 | 7 | 15 | 20 | 20 |
| Sablefish | 20 | 20 | 20 | 35 | 20 | 20 | 20 | 20 | 35 | [3] na | 7 | 15 | 20 | 20 |
| Other rockfish | 20 | 20 | 20 | 35 | 20 | 20 | 20 | 20 | 35 | 15 | 7 | 15 | 20 | 20 |
| Other red rockfish–BS | 20 | 20 | 20 | 35 | 20 | 20 | 20 | 20 | 35 | 15 | 7 | 15 | 20 | 20 |
| Pacific ocean perch | 20 | 20 | 20 | 35 | 20 | 20 | 20 | 20 | 35 | 15 | 7 | 15 | 20 | 20 |
| Sharpchin/Northern–AI | 20 | 20 | 20 | 35 | 20 | 20 | 20 | 20 | 35 | 15 | 7 | 15 | 20 | 20 |
| Shortraker/Rougheye–AI | 20 | 20 | 20 | 35 | 20 | 20 | 20 | 20 | 35 | 15 | [3] na | 15 | 20 | 20 |
| Squid | 20 | 20 | 20 | 35 | 20 | 20 | 20 | 20 | 1 | 1 | 2 | 5 | [3] na | 20 |
| Other species | 20 | 20 | 20 | 35 | 20 | 20 | 20 | 20 | 1 | 1 | 2 | 5 | 20 | [3] na |
| Aggregated amount non-groundfish species | 20 | 20 | 20 | 35 | 20 | 20 | 20 | 20 | 1 | 1 | 2 | 5 | 20 | 20 |

[1] For definition of species, see Table 1 of the Bering Sea and Aleutian Islands groundfish specifications.
[2] Aggregated rockfish of the genera Sebastes and Sebastolobus except in the Aleutian Islands Subarea where shortraker and rougheye rockfish is a separate category.
[3] na=not applicable.

[FR Doc. 98–1155 Filed 1–15–98; 8:45 am]

**BILLING CODE 3510–22–P**

# Notices

Federal Register
Vol. 63, No. 11
Friday, January 16, 1998

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

## DEPARTMENT OF AGRICULTURE

### Economic Research Service

### Notice of Intent to Seek Approval to Collect Information

**AGENCY:** Economic Research Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub.L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the Economic Research Service's (ERS) intention to request approval for a new information collection from day care home sponsoring organizations participating in the Child and Adult Care Food Program (CACFP); from day care homes that participate in CACFP; from day care homes that have dropped out of the program; and from parents of children cared for in participating day care homes in order to answer the legislative mandate in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193, Sec. 708 (l)) to study the impact of amendments to the CACFP's authorizing legislation on participation and day care home licensing.

**DATES:** Comments on this notice must be received by March 23, 1998 to be assured of consideration.

**ADDITIONAL INFORMATION OR COMMENTS:** Contact Linda Ghelfi, Food Assistance, Poverty, and Well-Being Branch, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M. St., NW, Room 2145, Washington, DC 20036–5831, 202–694–5351.

**SUPPLEMENTARY INFORMATION:**

*Title: Application for ERS collection of information on day care home sponsoring organizations, current and ''dropout'' day care homes, and parents of children cared for in day care homes that receive food assistance through the Child and Adult Care Food Program (CACFP).*

*Type of Request: Approval to collect information on the sponsors, current and ''dropout'' day care homes, and parents of children cared for in day care homes that receive food assistance through the Child and Adult Care Food Program (CACFP).*

*Abstract: The Economic Research Service has the responsibility to provide social and economic intelligence on consumer, food marketing, and rural issues, including: Food consumption determinants and trends; consumer demand for food quality, safety, and nutrition; food market competition and coordination; food security status of the poor; domestic food assistance programs; low-income assistance programs; and food safety regulation.*

The Food and Nutrition Service (FNS) administers the nutrition assistance programs of the U.S. Department of Agriculture. FNS'' Child and Adult Care Food Program (CACFP) provides cash reimbursements and commodity foods for meals served in child and adult care centers, and day care homes. Some 2.3 million children, of which about 988,000 were cared for in day care homes, participated in the program in June 1997. Generally, day care homes provide care in a licensed or approved private home for a small group of children. Day care homes must be administered by a sponsoring organization that ensures compliance with Federal and State regulations and prepares a monthly food reimbursement claim. The sponsoring organization also receives Federal reimbursement for administrative expenses, based on the number of homes it sponsors.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub.L. 104–193, Sec. 708) amended the CACFP's authorizing legislation, instituting, on July 1, 1997, a tiered reimbursement system that reimburses day care homes in low-income areas and those in other areas that are run by low-income providers (tier I) at a higher rate than day care homes in other areas that are run by higher income providers (tier II). Meals served to low-income children in tier II homes may be reimbursed at the tier I rate if the parents of those children apply to the sponsoring organization.

The data collection effort proposed here will obtain information necessary to complete the Study of Impact of Amendments on Program Participation and Family Day Care Licensing mandated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub.L. 104–193, Sec. 708 (l)).

A sample of day care home sponsoring organizations will be asked about the number of homes they sponsored before July 1, 1997, the number of homes by tier they sponsor at the time of the interview, and changes in their business operations or recruitment efforts related to the introduction of tiering. A sample of day care homes participating in CACFP will be asked about the number of children they care for, their tier status, and changes in their operations related to the tiering. Tier II homes in the sample will additionally be asked about the foods they serve and to obtain waivers from parents so that the portions of foods eaten by children they care for may be recorded. A sample of day care homes that dropped out of CACFP but continued to provide child care will be asked about the reasons they dropped out. They will also be asked about the foods they serve and to obtain waivers from parents so that the portions of foods eaten by children they care for may be recorded. A sample of parents whose children are cared for in tier I and tier II day care homes will be asked about their household characteristics on a voluntary basis.

Information gathered in these surveys is crucial to completing the Study of Impact of Amendments on Program Participation and Family Day Care Licensing mandated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub.L. 104–193, Sec. 708 (l)). The U.S. Department of Agriculture is required to report to Congress on changes in the numbers of participating day care homes, the nutritional adequacy and quality of meals served in tier II and ''dropout'' day care homes, and the income levels of children cared for in participating day care homes. Data collected in the surveys will provide the basis for that report.

ERS, working with Abt Associates, will conduct the surveys of CACFP day

care home sponsoring organizations, participating day care homes, ''dropout'' day care homes, and parents of children cared for in participating day care homes. The sampling process is four staged. Twenty States have been selected for the survey as a nationally representative sample of CACFP. The CACFP-administering agencies in those States will be asked for lists of sponsors. A random sample of the sponsors will be drawn and surveyed. From lists of participating and ''dropout'' homes provided by the sampled sponsors, random samples of participating and ''dropout'' homes will be selected and surveyed. From lists of parents provided by the participating day care homes, a random sample of parents will be drawn and surveyed.

Survey data will be collected through mail surveys, Computer-Assisted Telephone Interviewing (CATI), and, when necessary, personal interviews. With each stage of the sampling process dependent upon the success of the previous stage, every effort will be made to make the process as simple and user friendly as possible. For example, parents will be able to choose between a phone interview or mail survey to answer the household questions. Responses are voluntary and confidential. Survey data will be used with other data for statistical purposes and reported only in aggregate or statistical form.

No existing data sources, including FNS administrative data, can provide the information needed to complete the Study of Impact of Amendments on Program Participation and Family Day Care Licensing mandated by Congress. These data and the research they will support are vital to the Department's ability to assess the impact of amendments to CACFP.

*Estimate of Burden:* Public reporting burden for this data collection is estimated to vary by the type of respondent. Responses by sponsors and tier I providers are estimated to average 30 minutes. Responses by tier II and ''dropout'' homes are estimated to average 3 hours, with those who prepare foods needing an additional hour to answer an additional set of questions. Responses by parents of children cared for in participating day care homes are estimated to average 17 minutes. The estimates include time for listening to instructions, gathering data needed, and responding to questionnaire items.

*Respondents:* Representatives of day care home sponsoring organizations, participating day care providers, ''dropout'' day care providers, and parents of children cared for in participating day care homes.

*Estimated Number of Respondents:* 400 sponsors, 580 tier I providers, 580 tier II providers of which 145 prepare their own foods, 580 ''dropout'' day care providers of which 145 prepare their own foods, and 1,536 parents of children cared for in participating day care homes.

*Estimated Total Annual Burden on Respondents:* 4,521 hours.

Copies of the information to be collected can be obtained from Linda Ghelfi, Food Assistance, Poverty, and Well-Being Branch, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M. St., NW, Room 2145, Washington, DC 20036–5801, 202–694–5351.

*Comments:* Comments are invited on (a) whether the proposed collection of information is necessary for the proper functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques. Comments may be sent to Linda Ghelfi, Food Assistance, Poverty, and Well-Being Branch, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M. St., NW, Room 2145, Washington, DC 20036–5831. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C.

**Betsey Kuhn,**

*Director, Food and Rural Economics Division.*

[FR Doc. 98–1085 Filed 1–15–98; 8:45 am]

BILLING CODE 3410–18–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to Procurement List.

**SUMMARY:** The Committee has received proposals 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.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** February 17, 1998.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (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.

If the Committee approves the proposed additions, 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 does not appear to 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. 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*

Slacks, Woman's

8410–01–NSH–0001 thru –0048

(Requirements for the U.S. Coast Guard)

NPA: Vocational Guidance Services, Cleveland, Ohio

*Services*

Food Service, Naval Nuclear Power Training Command, Naval Weapons Station Charleston, Goose Creek, South Carolina
NPA: Goodwill Industries of Lower South Carolina, Inc., Charleston, South Carolina
Furnishings Management Service, Travis Air Force Base, California
NPA: Pacific Coast Community Services, Alameda, California

*Janitorial/Custodial*

U.S. Coast Guard Air Station, Sitka, Alaska
NPA: REACH, Inc., Juneau, Alaska
Naval Air Station Atlanta, Marietta, Georgia
NPA: Nobis Enterprises, Inc., Marietta, Georgia
Locator Operator, Department of Housing and Urban Development, Washington, DC
NPA: Fairfax Opportunities Unlimited, Inc., Alexandria, Virginia
Switchboard Operation, Veterans Affairs Medical Center, 5901 East Seventh Street, Long Beach, California
NPA: The Lighthouse of Houston, Houston, Texas

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 98–1140 Filed 1–15–98; 8:45 am]

BILLING CODE 6353–01–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to Procurement List.

**SUMMARY:** The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** February 17, 1998.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (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.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service 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 service to the Government.

2. The action will result in authorizing small entities to furnish the commodities and service 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 service 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 service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

*Commodities*

Frame, Mattress, Wooden
37—½″ × 74″
35—½″ × 74″
37—½″ × 79″
52—½″ × 74″
59—½″ × 79″
52—½″ × 79″
35—½″ × 79″
NPA: Wilkes County Vocational Workshop, Inc., North Wilkesboro, North Carolina

*Service*

Medical Transcription, Veterans Affairs Medical Center, Clarksburg, West Virginia
NPA: National Industries for the Blind, Alexandria, Virginia

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 98–1141 Filed 1–15–98; 8:45 am]

BILLING CODE 6353–01–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 948]**

### Relocation/Expansion of Foreign-Trade Subzone 143A; C. Ceronix, Inc., Auburn, California

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* an application from the Sacramento-Yolo Port District, grantee of Foreign-Trade Zone 143, requesting authority on behalf of C. Ceronix, Inc., to relocate subzone status (Subzone 143A) to a larger facility (21 acres) located in Auburn, California, was filed by the Board on April 21, 1997 (FTZ Docket 35–97, 62 FR 24393, 5/5/97);

*Whereas,* notice inviting public comment was given in **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

*Now, therefore,* the Board hereby orders:

The application to relocate/expand SZ 143A is approved, subject to the Act and the Board's regulations, including Section 400.28. The existing site of SZ 143A will retain FTZ status for a period of six months from the date of approval, subject to concurrence of the U.S. Customs Service Port Director.

Signed at Washington, DC, this 7th day of January 1998.

**Robert S. LaRussa,**

*Assistant Secretary of Commerce, for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

*Dennis Puccinelli,*

**Acting Executive Secretary.**

[FR Doc. 98–1163 Filed 1–15–98; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 84–97]**

### Foreign-Trade Zone 136—Brevard County, FL; Application for Foreign-Trade Subzone Status Harris Corporation—Electronic Systems Sector (Telecommunication/ Information Systems), Brevard County, FL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Canaveral Port Authority, grantee of FTZ 136, requesting special-purpose subzone status for the manufacturing facilities (telecommunication/information systems) of the Electronic Systems Sector (ESS) business unit of Harris Corporation, located at sites in Brevard County, Florida. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 22, 1997.

The Harris ESS facilities are located at four sites in Brevard County, Florida (388 acres, 1.9 million sq. ft.): *Site 1* (44 buildings/1.9 million square feet on 181 acres)—located at 2400 NE Palm Bay Road, Palm Bay; *Site 2* (4 buildings/ 315,000 sq. ft. on 50 acres)—located at 150 S. Wickham Road, Melbourne; *Site 3* (2 buildings/114,000 sq. ft. on 30 acres)—located at 505 N. John Rodes Blvd., West Melbourne; and *Site 4* (3 buildings/215 sq. ft. on 127 acres)—located at 2800 Jordan Boulevard, Malabar.

The facilities (6,200 employees) are used for the development and manufacture of telecommunication and information systems products and related software for defense, aerospace, transportation and energy management, meteorology and publishing. Applications include digital maps, cockpit controls and displays, antennas, land and satellite communications terminals and networks, satellite antenna testing, electronic warfare and evaluation systems, global positioning control systems, signal and imaging processing, weather support systems, civil and military air traffic control systems, integrated airport communication and management systems, and information processing systems for publishing. Some of the components used in the manufacturing process are purchased from abroad (an estimated 10–15% of finished product value), including power supplies, mobile data terminals, optical switch modules, transmission apparatus, printed circuits, connectors, optical instruments and appliances, testing equipment, audio-frequency electrical amplifiers, static connectors, electronic parts and equipment, and antennae reflectors (duty rates range from duty-free to 8.5%; weighted average—3.4%).

Zone procedures would exempt Harris from Customs duty payments on foreign components used in export production. On its domestic sales, Harris would be able to choose the lower duty rate that applies to the finished products (duty-free to 6.0%; weighted average—2.5%) for the foreign components noted above. FTZ procedures will also help Harris ESS to implement a more cost-effective system for handling Customs requirements (including reduced brokerage fees and Customs merchandise processing fees). FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

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

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 17, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 1, 1998. A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

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

U.S. Department of Commerce Export Assistance Center, 200 E. Robinson St., Suite 1270, Orlando, Florida 32801

Dated: December 23,1997.

**Dennis Puccinelli,**

*Acting Executive Secretary.*

[FR Doc. 98–1161 Filed 1–15–98; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 1–98]**

### Foreign-Trade Zone 92, Harrison County, Mississippi Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Greater Gulfport/ Biloxi Foreign-Trade Zone, Inc., grantee of FTZ 92, based in Harrison County, Mississippi, requesting authority to expand its zone at sites in Jackson and Hancock Counties, Mississippi, within the Pascagoula and Gulfport Customs ports of entry. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 6, 1998.

FTZ 92 was approved on November 4, 1983 (Board Order 232, 48 FR 52107, 11/16/83) and expanded on August 17, 1992 (Board Order 595, 57 FR 39388, 8/ 31/97). The zone project currently consists of the following sites in Harrison County: *Site 1* (167 acres)—Port of Gulfport complex, Highway 90 and 30th Avenue, Gilbert; *Site 2* (717 acres)—industrial area within the Gulfport/Biloxi Regional Airport, Gulfport; *Site 3* (2,471 acres)—Bernard Bayou Industrial Park, 1 mile north of Gulfport, Harrison County; and, *Site 4* (484 acres)—Long Beach Industrial Park, 5 miles west of Gulfport between Espy Avenue and Beat Line Road, Long Beach.

The applicant, in a major revision to its zone plan, now requests authority to expand the general-purpose zone to include nine new sites (1,731 acres) in Jackson and Hancock Counties (Proposed Sites 5–13): *Site 5* (254 acres)—Trent C. Lott International Airport, 8301 Saracennia Road, Moss Point (Jackson County); *Site 6* (148 acres)—Greenwood Island, Bayou Casotte area of Pascagoula (Jackson County); *Site 7* (193 acres)—Port of Pascagoula (2 harbors)—West Harbor (112 acres), located on the Pascagoula River, and East Harbor (81 acres), located in the Bayou Casotte industrial area, Pascagoula (Jackson County); *Site 8* (283 acres)—John C. Stennis Industrial Park (formerly the Jackson County Airport), Highway 611/63, adjacent to the Bayou Casotte Harbor's deep water port facility, Pascagoula (Jackson County); *Site 9* (13 acres)—Heinz facility, east bank of the Pascagoula River, across from the Port of Pascagoula West Harbor, Pascagoula (Jackson County); *Site 10* (65 acres)—within the

300-acre Sunplex Industrial Park, Mississippi Highway 57 between Interstate 10 and US Highway 90, within one mile of the city limits of Ocean Springs (Jackson County); *Site 11* (621 acres)—within the 3,600-acre Port Bienville Industrial Park, mouth of the Pearl River, 2.7 miles south of U.S. Highway 90, Pearlington (Hancock County); *Site 12* (87 acres)—Mississippi Army Ammunition Plant (part of the 14,000-acre John C. Stennis Space Center), 4 miles north of Interstate 10, State Highway 607, Kiln, (Hancock County); and, *Site 13* (67 acres)—Stennis International Airport, Kiln (Hancock County). All of these sites are owned or controlled by either the Jackson County Port Authority or the Hancock County Port and Harbor Commission. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

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

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 17, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 1, 1998.

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

Gulf Regional Planning Commission, 1232 Pass Road, Gulfport, MS 39501

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

Dated: January 7, 1998.

**Dennis Puccinelli,**

*Acting Executive Secretary.*

[FR Doc. 98–1162 Filed 1–15–98; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–351–820]**

### Ferrosilicon From Brazil: Notice of Partial Termination and Preliminary Results of Antidumping Duty Administrative Review

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

**ACTION:** Notice of Preliminary Results of Antidumping Duty Administrative Review.

**SUMMARY:** In response to timely requests for administrative review, the Department of Commerce has conducted an administrative review of the antidumping duty order on ferrosilicon from Brazil. Because we determined that Companhia Brasileria Carbureto de Calcio had no shipment of the subject merchandise, we are terminating this review with regard to that firm. This notice of preliminary results covers one manufacturer/exporter, Companhia de Ferro Ligas da Bahia, for the period March 1, 1996, through February 28, 1997. The review indicates that there was no dumping margin during this period. If these preliminary results are adopted for purposes of the final results of our administrative review, we will instruct the Customs Service to assess antidumping duties of zero on entries during the period of review. Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the arguments (1) a statement of the issues, and (2) a brief summary of each argument.

**EFFECTIVE DATE:** January 16, 1998.

**FOR FURTHER INFORMATION CONTACT:** Wendy Frankel or Sal Tauhidi, AD/CVD Enforcement Group II, Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5849 or (202) 482–4851, respectively.

**SUPPLEMENTAL INFORMATION:**

### The 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 to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department of Commerce's (the Department's) regulations are to the regulations as codified at 19 CFR Part 353 (1997). Where appropriate, we have cited the Department's new regulations, codified at 19 CFR Part 351 (62 FR 27296, May 19, 1997). While not binding on this review, the new regulations serve as a restatement of the Department's policies.

### Background

On March 7, 1997 (62 FR 10521), the Department published in the **Federal Register** a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order on Ferrosilicon from Brazil covering the period March 1, 1996, through February 28, 1997. In accordance with 19 CFR 353.22(a)(2), in March 1997, Companhia de Ferro Ligas da Bahia (Ferbasa), Companhia Brasileira Carbureto De Calcio (CBCC), and Companhia Ferroligas Minas Gerais (Minasligas) requested that the Department conduct an administrative review of their respective shipments of ferrosilicon to the United States during this period. On April 24, 1997, the Department published a notice of initiation of administrative review (62 FR 19988). The Department is now conducting this administrative review in accordance with section 751 of the Act.

On May 14, 1997, the Department issued an antidumping duty questionnaire to Ferbasa, CBCC, and Minasligas. On June 20, 1997, CBCC submitted a letter to the Department stating that it had no shipments or sales of the subject merchandise to the United States during the period of review (POR). On June 25, 1997, we requested the Customs Service (Customs) to confirm that CBCC had no shipments of the subject merchandise during the POR. On June 27, 1997, Customs did so. Therefore, because we determined that CBCC had no shipments of the subject merchandise during the POR, we are terminating this review with respect to CBCC. Further, on July 7, 1997, Minasligas requested that it be allowed to withdraw its request for review and that the review be terminated pursuant to 19 CFR 353.22(a)(5). On July 29, 1997, the Department published a partial termination notice of the administrative review on ferrosilicon from Brazil with respect to Minasligas. (*See Ferrosilicon From Brazil: Partial Termination of Antidumping Duty Administrative Review (62 FR 40501) (July 29, 1997).)*

Ferbasa submitted its response to the questionnaire on July 11, 1997. The Department issued supplemental questionnaires on August 13, 1997, and October 14, 1997. We received Ferbasa's

responses to the supplemental questionnaires on September 2, 1997, and October 24, 1997, respectively. Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of a preliminary determination if it determines that it is not practicable to complete the review within the statutory time limit. On September 15, 1997, the Department published an extension of the time limits for the preliminary results. (*See Ferrosilicon from Brazil: Extension of Time Limits of Antidumping Duty Administrative Review,* (62 FR 48218).)

*Verification*

In accordance with section 782(i) of the Act, we verified the sales and cost questionnaire responses of Ferbasa from November 3, 1997 to November 11, 1997. We conducted verification of home market and U.S. sales information provided by Ferbasa using standard verification procedures, including on-site inspection of the company's sales and production facility, the examination of relevant sales and financial records, and original documentation containing relevant information.

**Scope of Review**

The merchandise subject to this review is ferrosilicon, a ferro alloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element. Ferrosilicon is a ferro alloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages by weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon. Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of this review. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon, and 28 to 32 percent calcium. Ferrocalcium silicon is a ferro alloy containing, by weight, not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferro alloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium. Ferrosilicon is currently classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this review is dispositive.

Ferrosilicon in the form of slag is included within the scope of this order if it meets, in general, the chemical content definition stated above and is capable of being used as ferrosilicon. Parties that believe their importations of ferrosilicon slag do not meet these definitions should contact the Department and request a scope determination.

**Product Comparisons**

In accordance with section 771(16) of the Act, we considered all products produced by Ferbasa, covered by the description in the ''Scope of the Review'' section, above, and sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to the U.S. sale. During the month of the U.S. sale, Ferbasa had home market sales of identical merchandise; therefore, pursuant to section 771(16) of the Act we used those sales for comparison purposes and made no adjustments for differences in merchandise.

**Level of Trade**

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine normal value (NV) based on sales in the comparison market at the same level of trade (LOT) as the export price (EP) or constructed export price (CEP) transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer 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 an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). 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 review, we obtained information from Ferbasa regarding the marketing stages involved in the reported home market and U.S. sales, including a description of the selling activities performed by Ferbasa for each channel of distribution. Pursuant to section 773(a)(1)(B)(i) of the Act and the SAA at 827, in identifying levels of trade for EP and home market sales we considered the selling functions reflected in the starting prices before any adjustments. Ferbasa made only one U.S. sale during the period of review, which was to an unaffiliated reseller in the U.S. market. It made sales to unaffiliated resellers and to steel producers in the home market. The selling functions for the U.S. sale and for all home market sales are almost identical. The selling functions include invoicing, order acknowledgment, order processing, quality control, marketing, and price negotiation. With regard to the U.S. sale, Ferbasa also incurred freight expenses for movement of the subject merchandise from the factory to the port of embarkation. This does not represent a significant difference in selling functions. Thus, based on our analysis of the selling functions performed by Ferbasa, we conclude that a single level of trade exists in each market and that home market sales and the U.S. sale were all made at the same level of trade. Therefore, we have not made a level of trade adjustment because the price comparison is at the same level of trade and an adjustment pursuant to section

773(a)(7)(A) of the Act is not appropriate.

**Export Price**

We calculated EP, in accordance with subsections 772(a) and (c) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price was not otherwise warranted based on the facts of record. We calculated EP based on the packed FOB prices to Ferbasa's unaffiliated customer in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions, where appropriate, for foreign inland freight from the plant to the port and for brokerage and handling, because these expenses were incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery. No other adjustments to EP were claimed or allowed.

**Normal Value**

Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Ferbasa's volume of home market sales of foreign like product to the volume of U.S. sales of the subject merchandise in accordance with section 773(a)(1)(C)(ii) of the Act. Since the aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for Ferbasa. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the prices at which the foreign like products were first sold for consumption in the exporting country. We calculated NV as noted in the ''Price-to-Price Comparisons'' section of this notice, below.

**Cost of Production (COP) Analysis**

Because we disregarded sales below the COP in the last completed segment of the proceeding for Ferbasa (*i.e., Ferrosilicon from Brazil; Final Results of Administrative Review* (61 FR 59407) (November 22, 1996)), we had reasonable grounds to believe or suspect that sales of the foreign product under consideration for the determination of NV in this review may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Ferbasa in the home market.

*1. Calculation of COP*

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of Ferbasa's cost of materials and fabrication employed in producing the foreign like product, plus amounts for general and administrative expenses (G&A). We adjusted Ferbasa's reported costs to calculate the cost of manufacturing for the months corresponding to the company's sales reporting period. We further adjusted Ferbasa's reported net interest expense calculations to account for certain items of income or expense that were improperly excluded or included in the company's calculation.

*2. Net Home Market Prices for Comparison to COP*

We calculated net price by reducing the gross unit price by amounts for IPI and ICMS taxes, indirect selling expenses, home market packing expenses, direct selling expenses, and billing adjustments. We also made upward adjustments to the home market prices for interest revenue and packing revenue earned by Ferbasa. We adjusted Ferbasa's reported home market packing costs for errors found at verification.

*3. Test of Home Market Prices*

We used Ferbasa's weighted-average COP, as adjusted (see above), for the period September 1996, through February 1997. We compared the weighted-average COP figure to the net home-market sales prices (see above) of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices below the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices (which did not include value added taxes) (VAT) less any applicable movement charges, discounts, and rebates. Since the COP did not contain VAT, for purposes of our sales-below-cost analysis, we used home market prices which were exclusive of VAT.

*4. Results of the COP Test*

In accordance with section 773(b)(2)(C), where less than 20 percent of Ferbasa's sales of ferrosilicon were at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of Ferbasa's sales during the POR were at prices 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, and not 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 such below-cost sales of Ferbasa.

**Fair Value Comparisons**

To determine whether sales of ferrosilicon by Ferbasa to the United States were made at less than fair value, we compared the EP to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated a monthly weighted-average price for NV and compared this to the U.S. transaction.

**Price to Price Comparisons**

We based NV on the price at which the foreign like product was first sold for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade, and at the same level of trade as the export price, as defined by section 773(a)(1)(B)(i) of the Act. We increased NV by U.S. packing costs in accordance with section 773(a)(6)(A) and reduced it by home market packing costs and ICMS and IPI taxes in accordance with 773(a)(6)(B) (i) and (iii) of the Act. We adjusted Ferbasa's reported U.S. and home market packing costs to correct for errors found at verification. In addition, we increased NV for packing revenue and interest revenue earned by Ferbasa and decreased NV for billing adjustments reported by Ferbasa. We made a circumstance of sale adjustment for credit expenses under 773(a)(6)(C)(iii). Further, in accordance with 19 CFR 353.56(a)(2), we made an offset to NV for U.S. commissions. No other adjustments to NV were claimed or allowed.

**Currency Conversion**

We made currency conversions in accordance with section 773(A) of the Act. Currency conversions were made based on the rates certified by the Federal Reserve Bank. Section 773(A) directs the Department to use a daily exchange rate to convert foreign currencies into U.S. dollars unless the daily rate involves a ''fluctuation.'' It is our practice to find that a fluctuation exists when the daily exchange rate differs from a benchmark rate by 2.25 percent. *See Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel*

*Pipe and Tube from Turkey* (61 FR 35188, 35192) (July 5, 1996). The benchmark rate is defined as the rolling average of the rates for the past 40 business days.

**Preliminary Results of the Review**

As a result of this review, we preliminarily determine that the weighted-average dumping margin for Ferbasa is zero percent for the period March 1, 1996, through February 28, 1997.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties are invited to comment on the preliminary results. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) A statement of the issue and (2) a brief summary of the argument. All case briefs must be submitted within 30 days of the date of publication of this notice. Rebuttal briefs, which are limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments within 120 days from the publication of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For duty assessment purposes, because this review covers only one importer, we will divide the total dumping margin (calculated as the difference between NV and EP) by the total number of metric tons imported. We will direct Customs to assess the resulting per-metric ton dollar amount against each metric ton of subject merchandise entered by the importer during the POR. Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of ferrosilicon from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Ferbasa will be the rate established in the final results of this administrative review, except if the rate is less than 0.5 percent, *ad valorem* and, therefore, *de minimis* within the meaning of 19 CFR 353.6, the cash deposit rate will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less than fair value (LTFV) investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published in the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 35.95 percent, the ''All Others'' rate made effective by the antidumping duty order (59 FR 11769, March 14, 1994) and; (5) consistent with our practice in previous reviews of this order, for those companies that did not have shipments of the subject merchandise during the POR but which had previously been reviewed or investigated, their cash deposit rate will continue to be the company-specific rate published for the most recently reviewed period. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 12, 1998.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 98–1157 Filed 1–15–98; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–337–803]**

### Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Atlantic Salmon From Chile

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

**EFFECTIVE DATE:** January 16, 1998.

**FOR FURTHER INFORMATION CONTACT:** Gabriel Adler or Kris Campbell, Office of AD/CVD Enforcement 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1442 or (202) 482–3813, respectively.

**SUPPLEMENTARY INFORMATION:**

**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 last codified at 19 CFR part 353 (April 1, 1997).

**Preliminary Determination**

We preliminarily determine that fresh Atlantic salmon from Chile 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 are shown in the *Suspension of Liquidation* section of this notice.

**Case History**

This investigation was initiated on July 2, 1997. *See Initiation of Antidumping Duty Investigation: Fresh Atlantic Salmon From Chile,* 62 FR 37027 (July 10, 1997) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred:

On July 12, 1997, the United States International Trade Commission (the ITC) preliminarily determined that there is a reasonable indication that imports of the product under investigation are materially injuring the United States industry.

On July 21, 1997, the Department invited interested parties to submit comments regarding selection of respondents and model matching. After considering those comments, on August

26, 1997, the Department selected the following companies as respondents in this investigation: Pesquera Mares Australes Ltda. (Mares Australes); Marine Harvest Chile (Marine Harvest); Aguas Claras S.A. (Aguas Claras); Pesquera Eicosal Ltda. (Eicosal); and Cia. Pesquera Camanchaca S.A. (Camanchaca) (collectively ''respondents''). *See Selection of Respondents,* below. On the same date, the Department issued an antidumping questionnaire to the selected respondents.[1]

The respondents submitted their initial responses to that questionnaire in September and October of 1997. After analyzing these responses, we issued supplemental questionnaires to the respondents to clarify or correct the initial questionnaire responses.

On October 6, 1997, the Coalition for Fair Atlantic Salmon Trade (the petitioners) requested that the Department initiate a sales-below-cost investigation with respect to sales in Canada by Aguas Claras.[2] The petitioners' allegation was timely, and provided reasonable grounds to believe that Aguas Claras had made sales below cost in Canada. Therefore, in accordance with section 773(b) of the Act, on October 21, 1997, we initiated a sales-below-cost investigation with respect to Aguas Claras' sales to Canada. *See Cost of Production,* below.

On October 17, 1997, in accordance with section 773(a)(1) of the Act, the Department determined that a particular market situation existed in the home market that rendered sales in that market an inappropriate basis for comparison to U.S. sales. The Department requested that Eicosal and Mares Australes, the two respondents that had provided a response to Section B of our questionnaire based on home market sales, provide a revised response based on sales to Japan, the only viable third-country market for those two companies. Eicosal and Mares Australes complied with this request, but argued that to the extent that the Department considered that the home market presents a particular market situation, it should find that Japan also presents a particular market situation. *See Selection of Comparison Markets,* below.

On October 17, 1997, the petitioners filed a timely request for a 50-day postponement of the preliminary determination. Absent compelling reasons to deny this request, and in accordance with section 733(c)(1)(A) of the Act and section 353.15(c) of the Department's regulations, on October 23, 1997, the Department postponed the preliminary determination until not later than January 8, 1998. *See Notice of Postponement of Preliminary Antidumping Determination: Fresh Atlantic Salmon from Chile,* 62 FR 56151 (October 29, 1997).

*Postponement of Final Determination*

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination, if in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise.

On December 18, 1997, the respondents in this investigation, who account for a significant proportion of exports of subject merchandise, made such a request. In their request for an extension of the deadline for the final determination, the respondents consented to the extension of provisional measures to no longer than six months. Since this preliminary determination is affirmative, and there is no compelling reason to deny the respondents' request, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register**.

*Period of Investigation*

The period of investigation (POI) is April 1, 1996, through March 31, 1997. This period corresponds to each respondent's four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.,* June 1996).

*Scope of Investigation*

The scope of this investigation covers fresh, farmed Atlantic salmon, whether imported ''dressed'' or cut. Atlantic salmon is the species Salmo salar, in the genus Salmo of the family salmoninae. ''Dressed'' Atlantic salmon refers to salmon that has been bled, gutted, and cleaned. Dressed Atlantic salmon may be imported with the head on or off; with the tail on or off; and with the gills in or out. All cuts of fresh Atlantic salmon are included in the scope of the investigation. Examples of cuts include, but are not limited to: crosswise cuts (steaks), lengthwise cuts (fillets), lengthwise cuts attached by skin (butterfly cuts), combinations of crosswise and lengthwise cuts (combination packages), and Atlantic salmon that is minced, shredded, or ground. Cuts may be subjected to various degrees of trimming, and imported with the skin on or off and with the ''pin bones'' in or out.

Excluded from the scope are (1) fresh Atlantic salmon that is ''not farmed'' (*i.e.,* wild Atlantic salmon); (2) live Atlantic salmon; and (3) Atlantic salmon that has been subject to further processing, such as frozen, canned, dried, and smoked Atlantic salmon, or processed into forms such as sausages, hot dogs, and burgers.

The merchandise subject to this investigation is classifiable as item numbers 0302.12.0003 and 0304.10.4093 of the Harmonized Tariff Schedule (HTS) of the United States. Although the HTS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

*Class or Kind*

We have preliminarily determined that the products subject to this investigation comprise a single class or kind of merchandise. Our determination is based on an evaluation of the criteria set forth in *Diversified Products* v. *United States,* 572 F. Supp. 883, 889 (CIT 1983) (*Diversified Products*), which look to differences in: (1) The general physical characteristics of the merchandise, (2) the expectations of the ultimate purchaser, (3) the ultimate use of the merchandise, (4) the channels of trade in which the merchandise moves, and (5) cost. In making this determination, we have rejected a request by two of the respondents in this investigation, Mares Australes and Eicosal, that the Department determine that there are two separate classes or kinds of merchandise subject to investigation: (1) Fresh whole dressed Atlantic salmon, and (2) fresh Atlantic salmon meat. *See* letter from Arnold & Porter to Department of Commerce (November 3, 1997). In our analysis of the *Diversified Products* criteria, we found first, with respect to physical differences, that although certain differences between the two forms of the

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market. Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation.

[2] The petition had demonstrated reasonable grounds to believe that Chilean producers/exporters of the foreign like product had made sales below cost in Japan and Brazil, and the Department had initiated country-wide cost investigations with respect to these markets. However, the petition did not make an allegation of sales below cost with respect to Canada. *See Initiation Notice* at 37029.

merchandise exist, these differences have not been shown to outweigh the similarities among the products. With respect to the expectations of the ultimate purchaser and the ultimate use of the merchandise, we found that both whole dressed salmon and salmon cuts are ultimately destined for human consumption. Moreover, even if we were to consider restaurants/supermarkets as the ''ultimate purchaser,'' there is insufficient evidence to support the respondents' claim that whole salmon is sold to gourmet restaurants and fillets of salmon are sold to supermarkets and warehouse retailers. Finally, with respect to cost, we found while there is a cost difference involved in the additional cutting procedure required to make a fillet from a dressed fish, that difference alone is not significant enough to warrant a finding that there are two classes or kinds of merchandise. For a more detailed discussion of our preliminary determination with respect to the class or kind issue, *see* Memorandum from Gary Taverman to Richard W. Moreland, Fresh Atlantic Salmon from Chile: Issues Concerning the Preliminary Determination of Sales at Less Than Fair Value (January 8, 1998) (Preliminary Determination Memorandum).

*Selection of Respondents*

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either: (1) A sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined.

After consideration of the complexities expected to arise in this proceeding (including issues of model matching, market viability, and cost of production), and the resources available to the Department, we determined that it was not practicable in this investigation to examine all known producers/exporters of subject merchandise. Instead, we found that given our resources we would be able to investigate the five producers/exporters with the greatest export volume, as identified above. These companies accounted for slightly less than 50 percent of all known exports of the subject merchandise during the POI. For a more detailed discussion of respondent selection in this investigation, *see* Memorandum from the Team to Richard W. Moreland, (August 26, 1997) (Respondent Selection Memorandum).

*Product Comparisons*

Pursuant to section 771(16) of the Act, all products produced by the respondents that fit the definition of the scope of the investigation and were sold in the comparison third-country markets during the POI fall within the definition of the foreign like product. We have relied on three criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: form, grade, and weight band. We have determined that it is generally not possible to match across forms, grades, or weight bands, because there are significant differences among products that cannot be accounted for by means of a difference-in-merchandise adjustment. (The exception to this general rule is that dressed salmon with gills in can be compared to dressed salmon with gills out, after making a difference-in-merchandise adjustment.) Therefore, we have compared U.S. sales to comparison market sales of identical merchandise, and have not compared U.S. sales to comparison market sales of similar merchandise. A detailed description of the matching criteria, as well as our matching methodology, is contained in the Preliminary Determination Memorandum.[3]

*Fair Value Comparisons*

To determine whether sales of fresh Atlantic salmon from Chile were made in the United States at less than fair value, we compared the export price (EP) or constructed export price (CEP) to the normal value (NV), as described in the *Export Price and Constructed Export Price* and *Normal Value* sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs.

*Export Price and Constructed Export Price*

In accordance with section 772 of the Act, we calculated either an EP or a CEP, depending on the nature of each sale. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the exporter or producer outside the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation, by or for the account of the producer or exporter of the merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under sections 772 (c) and (d) of the Act.

Consistent with these definitions, we have found that Aguas Claras, Mares Australes, and Camanchaca made EP sales during the POI. These sales are properly classified as EP sales because they were made by the exporter or producer outside the United States to unaffiliated customers in the United States prior to the date of importation. We note that the Aguas Claras EP sales were indirect (*i.e.*, these sales were made through an affiliated U.S. reseller that facilitated the processing of sales documentation).

We also found that all the respondents made CEP sales during the POI. Marine Harvest and Aguas Claras made sales through an affiliated reseller in the United States after the date of importation. Mares Australes, Eicosal, and Camanchaca made sales classifiable as CEP sales because the sales were made for the account of the producer/exporter by an unaffiliated consignment agent in the United States after the date of importation.[4]

[3] Certain respondents contend that, in the Japanese market, there is a distinction between premium and super-premium salmon. While we have accepted this claim for the preliminary determination, we intend to examine this issue thoroughly at verification.

[4] On October 31, 1997, the petitioners alleged that respondents Mares Australes, Camanchaca, and Eicosal are affiliated with their U.S. consignment sellers because the nature of a consignment relationship is such that the consignment seller controls the exporter. We have not adopted that position for this preliminary determination. In recent cases involving consignment sales of agricultural products, we explicitly recognized that a consignment relationship does not per se establish affiliation between the producer and the consignment seller. *See, e.g., Certain Fresh Cut Flowers from Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53287, 53295 (October 14, 1997) (rejecting petitioners' contention that ''any consignment sale implies affiliation between the exporter and the consignment importer''). Beyond the consignment nature of the relationship between the parties, the evidence on the record does not warrant a finding of affiliation. For a further

In their original questionnaire responses, Mares Australes, Eicosal, and Camanchaca reported prices based on the aggregated revenues reported periodically by unaffiliated consignment sellers. Because it is the Department's preference to examine transaction-specific data wherever possible, we requested that these three respondents prepare a listing of all sales made by unaffiliated consignment sellers to their U.S. customers. *See* letters from Department of Commerce to Arnold & Porter (October 31, 1997) (regarding sales by Eicosal and Camanchaca), and (November 20, 1997) (regarding sales by Mares Australes). The respondents complied with this request, but argued that since this data is not normally in their possession, the Department should instead rely on prices calculated on the basis of the aggregated revenues reported by the unaffiliated consignment sellers. *See* letters from Arnold & Porter to Department of Commerce (November 18, 1997) (submitting sales data for Eicosal and Camanchaca), and (December 8, 1997) (submitting sales data for Mares Australes). Given the Department's preference for transaction-specific data, we have relied on that data for this preliminary determination.

For all respondents, we calculated EP and CEP, as appropriate, based on packed prices charged to the first unaffiliated customer in the United States. (Where sales were made through consignment sellers, we did not consider the consignment seller to be the customer; rather, the relevant customer was the consignment seller's customer.) We based the date of sale on the date of the invoice issued to the U.S. customer.

In accordance with section 772(c)(2) of the Act, we reduced the EP and CEP by movement expenses and export taxes and duties, where appropriate.

Section 772(d)(1) of the Act provides for additional adjustments to the CEP. Generally, where sales were made through an unaffiliated consignment seller for the account of the exporter, we deducted commissions from the CEP.[5] Where sales were made through an affiliated reseller, we deducted direct and indirect selling expenses that related to commercial activity in the United States.

Section 772(d)(3) of the Act requires that the CEP be adjusted for the profit allocated to the selling expenses of a producer/exporter's affiliated reseller. For Marine Harvest and Aguas Claras, which made sales through affiliated resellers, we calculated a CEP profit ratio following the methodology set forth in section 772(f) of the Act.

We made company-specific adjustments as follows:

*Aguas Claras.* We based EP and CEP on delivered or C&F prices to unaffiliated customers in the United States. For both EP and CEP sales, we made deductions from the starting price, where appropriate, for movement expenses including foreign inland freight from the plant to Santiago airport, international air freight/insurance, and U.S. brokerage and handling fees and port charges. We also made deductions for post sale price adjustments corresponding to quality claims.

In addition, for CEP sales, we made deductions for U.S. inland freight to the customer, imputed credit, direct advertising, export documentation fees, quality control/inspection fees, and U.S. repacking costs.

*Camanchaca.* We based EP on either delivered, CIF Miami airport, or delivered, C&F Los Angeles airport, prices to unaffiliated customers in the United States. We based CEP on either delivered to customer or delivered FOB warehouse prices to unaffiliated customers of the consignment seller. For both EP and CEP sales, we made deductions from the starting price, where appropriate, for movement expenses including foreign inland freight from plant to Santiago airport, international air freight, transportation insurance from plant to final destination, and customs export documentation fees.

In addition, for CEP sales, we made deductions for U.S. customs duties, handling and warehousing fees, U.S. inland freight from the consignee to customer, as well as imputed credit, direct advertising, and wire transfer fees.

*Eicosal.* We based CEP on either FOB Miami, or delivered prices to the unaffiliated consignment seller's customers in the United States. We made deductions from the starting price, where appropriate, for movement expenses including foreign inland freight from plant to Chilean port of exit, international air freight, Chilean brokerage and handling fees, and U.S. inland freight from warehouse to customer. We also deducted post-sale price adjustments, including quality claims and invoicing errors; imputed credit; direct advertising; quality control/inspection fees; expenses for maintaining bank accounts in the United States for sales of the subject merchandise; and expenses associated with gill tags. We made an upward adjustment to the starting price for duty drawback.

*Mares Australes.* We based EP and CEP on either ex-factory, C&F U.S. port, or FOB Santiago prices to unaffiliated customers in the United States. For both EP and CEP sales, we made deductions from the starting price, where appropriate, for movement expenses including foreign inland freight from plant to Santiago airport, international air freight, U.S. customs duty, U.S. brokerage and handling, and post sale price adjustments including quality claims and a consignment broker's surcharge.

In addition, for CEP sales, we made deductions for U.S. inland freight from the consignee to customer, as well as for imputed credit, direct advertising, Chilean customs export documentation fees, and quality control/inspection fees.

*Marine Harvest.* We based CEP on FOB U.S. port and delivered prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for movement expenses including foreign inland freight from plant to Santiago airport, international air freight, U.S. customs duty, U.S. brokerage and handling, and post sale price adjustments including quality claims and rebates. In addition, we deducted U.S. inland freight from the port to the affiliated reseller and from the affiliated reseller to customer, as well as indirect selling expenses incurred by the affiliated reseller, repacking costs, imputed credit, inventory carrying costs, advertising, Chilean customs fees, quality control/inspection fees, and Association membership fees.

*Normal Value*

A. Selection of Comparison Markets

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 (or third country 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 or CEP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate

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discussion of this issue, *see* Preliminary Determination Memorandum.

[5] Consistent with our practice, we did not deduct from the CEP the expenses of the unaffiliated consignment seller, since such expenses are effectively covered by the commission charged by the consignment seller to the producer/exporter. *See, e.g., Certain Fresh Cut Flowers from Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 62 FR 53287, 53295 (October 14, 1997).

quantity (or value) of sales of the subject merchandise to the United States.

In their responses to our antidumping questionnaires, Mares Australes and Eicosal claimed that NV should be based on home market sales because the home market was viable. Marine Harvest and Aguas Claras indicated that their respective home markets were not viable, and claimed that NV should instead be based on sales to Japan and Canada, respectively, the only viable third-country market for each of these companies. Camanchaca stated that it had no viable comparison market at all, and claimed that NV should be based on the constructed value.

In determining the appropriate comparison market for each respondent, we examined several issues, as discussed in detail in the Preliminary Determination Memorandum. First, we determined that Chile was not an appropriate comparison market for Mares Australes and Eicosal because a particular market situation existed in Chile. Our determination was based on record evidence indicating that this market involves almost exclusively ''industrial'' or ''off-quality'' grades sold directly from the factory depending on availability. Since the Chilean market is incidental to the respondents, it is not appropriate for comparison with the U.S. market, which is one of the respondents' primary marketing targets and which involves sales of primarily high-grade ''premium'' salmon made through distributors.

After rejecting the use of the home market for Mares Australes and Eicosal, we determined that Japan is the appropriate comparison market for Mares Australes, Eicosal, and Marine Harvest. In making this determination, we rejected a contention by Mares Australes and Eicosal that, by the logic of the Department's decision to reject the home market, the Department should also find that Japan presents a particular market situation. We determined that the Japanese market, unlike the home market, is not incidental to the respondents. Sales to that market involve export-quality merchandise which, while often different in grade from merchandise sold in the United States, is not so different as to render the Japanese market as a whole an unsuitable basis for NV. By contrast, as explained above, the merchandise sold in the home market involved a relatively small volume of merchandise that was not of export-quality. Further, we note that the Department's decision to reject the use of the home market was predicated in part on the manner in which the foreign like product is sold in that market. Sales in Chile are made directly from the respondents' processing facilities, with no guarantee of quality, on an ''as available'' basis. By contrast, sales to both the United States and Japan involve much more elaborate distribution systems, which are designed to ensure customer satisfaction. In view of these considerations, we determined that Japan could serve as a proper market on which to base NV.

We note that for Eicosal and Marine Harvest, we were unable to find any appropriate price-to-price comparisons based on sales to Japan for this preliminary determination. Accordingly, for these companies we compared all U.S. sales to constructed value (CV), *i.e.*, the cost of the merchandise sold in the United States as if it were sold in Japan. However, for Mares Australes we were able to make price-to-price comparisons for some U.S. sales.

For Aguas Claras, we determined that the appropriate comparison market is Canada. For this company, we were able to find appropriate price-based NV matches for some U.S. sales; for the others, we resorted to CV. Finally, we based NV for Camanchaca entirely on CV, as that company did not have a viable comparison market.

Adjustments made in deriving the NVs for each company are described in detail in *Calculation of Normal Value Based on Third-Country Prices and Calculation of Normal Value Based on Constructed Value,* below.

B. Cost of Production Analysis

We tested whether comparison market sales were made below cost for all respondents except Camanchaca, which did not have a viable comparison market. Although Eicosal and Marine Harvest did not have comparison market sales of comparable merchandise during the POI, we performed a cost analysis based upon the petitioners' timely cost allegation for purposes of determining the proper basis for calculation of profit for CV.

Based on an allegation contained in the petition, we found reasonable grounds to believe or suspect that sales of fresh Atlantic salmon made in Japan and Brazil were made at prices below the cost of production (COP). *See Initiation Notice,* 62 FR at 37029, and Memorandum from the Team to Richard Moreland, (July 1, 1997) (Initiation Checklist), at 10. In addition, based on a timely allegation filed by the petitioners on October 6, 1997, the Department found reasonable grounds to believe or suspect that sales made by Aguas Claras in Canada were made at prices below the COP. *See* Memorandum from the Team to Richard Moreland, Regarding Petitioners' Allegation of Sales Below the Cost of Production for Aguas Claras (October 21, 1997). As a result, the Department has conducted investigations to determine whether the respondents made sales in their respective third-country markets at prices below their respective COPs during the POI within the meaning of section 773(b) of the Act.

*1. Calculation of COP.* In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP for each form of fresh Atlantic salmon, based on the sum of the cost of materials, fabrication and general expenses, and packing costs. We relied on the COP data submitted by each respondent in its supplementary cost questionnaire response, except, as discussed below, in specific instances where the submitted costs were not appropriately quantified or valued.

*Aguas Claras.* We revised Aguas Claras' financial expenses to exclude an offset for accounts receivables and finished goods inventory.

*Camanchaca.* We revised Camanchaca's financial expenses to reflect the ratio of net financial expenses to cost of goods sold, consistent with our general practice in the calculation of financial expenses.

*Eicosal.* We recalculated Eicosal's net financial expense on the basis of the consolidated financial expenses of Eicosal's parent company, Sociedad Pesquera Eicosal S.A. We also recalculated Eicosal's general & administrative (G&A) expenses to exclude an affiliated company's G&A expenses.

*Mares Australes.* We revised Mares Australes' financial expenses to exclude an offset for accounts receivables and finished goods inventory. We also rejected Mares Australes' claim that the calculation of costs should not include the costs associated with a particular group of salmon that had reached sexual maturation prior to harvesting (*i.e.*, salmon that had reached a ''grilse'' stage), because we found that the respondent did not adequately support its claim that this is an unusual, isolated event. We relied on the average cost to produce *all* groups of salmon sold during the POI.

*Marine Harvest.* We increased the reported cost of eggs and feed purchased from affiliated parties to reflect the difference between transfer prices and market prices, since the transfer prices were below market prices.

*2. Test of Third-Country Comparison Market Sales Prices.* We compared the adjusted weighted-average COP for each

respondent to the third-country comparison market sales of the foreign like product as required under section 773(b) of the Act (except for Camanchaca, which had no viable comparison market), in order to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities,[6] and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

On a product-specific basis, we compared the revised COP to the third-country comparison market prices, less any applicable movement charges, taxes, rebates, commissions and other direct and indirect selling expenses.

*3. Results of the COP Test.* After performing the COP test, we determined that Aguas Claras, Eicosal, Marine Harvest, and Mares Australes made third-country comparison market sales of certain products at prices below the COP, within an extended period of time in substantial quantities. Further, we found that the sales prices did not permit for the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis.

For Aguas Claras and Mares Australes, which had sales of comparable merchandise during the POI, we did not conduct price-to-price comparisons where all sales of a particular product were made at prices below the COP. Instead, we based NV on CV, and calculated profit for CV on the basis of third-country sales that did not fail the cost test. *See Calculation of Normal Value Based on Constructed Value,* below. For Marine Harvest and Eicosal, which had no sales of comparable merchandise in the third-country market that would permit price-to-price comparisons, the finding of sales below cost affected only the calculation of profit for CV, inasmuch as profit for these companies was based only on third-country sales that did not fail the cost test.

C. Calculation of Normal Value Based on Third-Country Prices

We performed price-to-price comparisons where there were sales of comparable merchandise in the third-country market that did not fail the cost test. Such comparisons were possible only for Aguas Claras and Mares Australes.

*Aguas Claras.* We calculated NV based on delivered or C&F prices, and made deductions from the starting price, where appropriate, for movement expenses including inland freight and insurance from the plant to the Chilean airport, international air freight and insurance, customs export documentation fee, and U.S. brokerage and handling fees. We also adjusted the starting price for quality claims. In addition, we made circumstance of sale (COS) adjustments for direct expenses, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act. These included imputed credit expenses and quality control/inspection fees. In accordance with section 773(a)(6)(A) and (B) of the Act, we deducted third country market packing costs and added U.S. packing costs.

As discussed in the *Level of Trade/ CEP Offset* section of this notice below, we preliminarily determined that it was appropriate to make a CEP offset to NV.

*Mares Australes.* We calculated NV based on C&F Japanese port or FOB Santiago prices to unaffiliated customers and made deductions, where appropriate, from the starting price for inland freight from the plant to Santiago airport and international air freight. We adjusted for COS differences in imputed credit expenses, quality control/ inspection fees, Chilean customs export document fees, repacking costs, and direct advertising expenses.

D. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Accordingly, for those fresh Atlantic salmon products for which we could not determine the NV based on comparison market sales, either because (1) there were no sales of a comparable product (as was the case for Eicosal, Marine Harvest, and Camanchaca) or (2) all sales of the comparison product failed the COP test (as was the case for Aguas Claras and Mares Australes, with respect to certain products), we based NV on CV.

Section 773(e)(1) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (SG&A), profit, and U.S. packing costs. For each respondent, we calculated the cost of materials and fabrication based on the methodology described in the *Calculation of COP* section of this notice, above. Except for Camanchaca, for every respondent we based SG&A and profit on the actual amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act. Because there is no viable comparison market for Camanchaca, and hence no actual company-specific profit and SG&A data available for Camanchaca, we calculated profit and indirect selling expenses in accordance with section 773(e)(2)(B)(iii) of the Act and the SAA at 841. Specifically, the SAA at 841 provides that where, due to the absence of data, the Department cannot determine amounts for profit under alternatives (i) or (ii) of section 773(e)(2)(B) of the Act or a ''profit cap'' under alternative (iii) of section 773(e)(2)(B) of the Act, the Department may apply alternative (iii) on the basis of the facts available. In this case, we are unable to determine an amount for profit under alternatives (i) or (ii) or a profit cap under alternative (iii) because none of the respondents have viable home markets. *See* 19 CFR 405(b)(2) of the Department's revised regulations (clarifying that under section 773(e)(2)(B) of the Act, ''foreign country'' means the country in which the merchandise is produced), (62 FR 27296, 27412–13 (May 19, 1997)). As a result, we are applying alternative (iii) on the basis of the facts available consistent with the SAA. As facts available, we calculated Camanchaca's profit and indirect selling expenses based on the weighted-average actual profit and indirect selling expenses of the other respondents in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in their respective comparison markets.

In addition, for each respondent we used U.S. packing costs as described in the *Export Price and Constructed Export Price* section of this notice, above.

We made adjustments to CV for differences in COS in accordance with section 773(a)(8) of the Act and 19 CFR 353.56. For comparisons to EP, we made

[6] In accordance with section 773(b)(2)(C)(i) of the Act, we determined that sales made at below the COP were made in substantial quantities if the volume of such sales represented 20 percent or more of the volume of sales under consideration for the determination of normal value. We note that on December 18, 1997, the respondents submitted a letter arguing that fresh Atlantic salmon is a highly perishable product and that the Department should not use the 20-percent ''substantial quantities'' test, but instead apply the test set forth by section 773(b)(2)(C)(ii) of the Act (which compares the average sales price to the average unit cost for the period). Because the respondents did not raise their argument until shortly before the issuance of this preliminary determination, we have not had an adequate opportunity to consider it. We have therefore relied on the standard 20 percent test, which has been used in past investigations involving salmon. *See Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway* 56 FR 7661 (February 25, 1991). However, we intend to examine this issue further for the final determination of this investigation.

COS adjustments by deducting direct selling expenses incurred on third-country market sales and adding U.S. direct selling expenses. For comparisons to CEP, we made COS adjustments by deducting direct selling expenses incurred on third-country market sales and adding U.S. direct selling expenses except those deducted from the starting price in calculating CEP pursuant to section 772(d) of the Act. We also made adjustments, where applicable, for indirect selling expenses incurred on third-country market sales to offset U.S. commissions in EP and CEP comparisons; specifically, we deducted from NV the lesser of (1) the amount of commission paid on a U.S. sale for a particular product, or (2) the amount of indirect selling expenses incurred on the third-country market sales for a particular product.

*Level of Trade/CEP Offset*

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 or CEP 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 exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer 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 an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *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 obtained information from each respondent about the marketing stage involved in the reported U.S. and third-country market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying levels of trade for EP and third-country market sales we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. We expect that, if claimed levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

For Mares Australes and Eicosal, we found one level of trade in Japan and one level of trade in the United States, between which there were no significant differences. Other than expenses related to movement, these companies performed few or no selling functions. Therefore, we preliminarily determine that these companies' Japanese levels of trade constitute neither more or less advanced stages of distribution than the levels of trade found in the United States at the levels of trade of the CEP. Accordingly, no adjustment for differences in levels of trade is warranted for either company.

For both Aguas Claras and Marine Harvest, we found that there is one level of trade for sales to Canada and Japan, respectively, and one level of trade for sales to the United States. As explained below, we also preliminarily determine that these companies' comparison market sales are made at a more advance level of trade than that of the CEP.

Aguas Claras makes all sales to Canada and all CEP sales to the United States through its affiliated consignee, Bowrain Corp. Information on the record indicates that Bowrain performs the same services with respect to both groups of sales, including identifying customers, arranging for handling and storage, and sales support to the final customer. As noted above, for CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. Thus, the level of trade of Aguas Claras' Canadian sales involves substantially more selling functions (those performed by Bowrain) than the level of trade of the CEP. We also note that the level of trade of Canadian sales differs from that of the CEP with respect to customer class: Canadian sales by Bowrain Corp. are to Canadian distributors, retailers, restaurants, and further processors; the customer at the CEP level of trade is Aguas Claras' reseller, Bowrain Corp. In light of these facts, we have determined that Aguas Claras' Canadian sales are made at a different, and more advanced, stage of marketing than the level of trade of the CEP. Aguas Claras also made indirect EP sales to the United States that are at a level of trade in the United States that is not substantially different from that of the level of trade of the CEP.

Similarly, Marine Harvest's comparison market sales are made at a more advanced stage of marketing than its CEP sales. Marine Harvest sells in Japan to a trading company that subsequently sells to processors and fishmongers through layers of wholesalers. The respondent maintains a sales office in Japan (Marine Harvest Japan) that coordinates with the trading company. Marine Harvest Japan sets prices and establishes order quantities with the trading company's primary wholesaler, coordinating the terms and conditions of the sale with the trading company. Marine Harvest Japan also assists in marketing salmon by accompanying the primary wholesaler on sales trips to secondary wholesalers and by working directly with the secondary wholesaler's customers. Further, Marine Harvest Japan provides after-sales service and quality claims. For CEP sales to its affiliated consignee in the United States, Marine Harvest performs few or no selling functions other than services related to movement of merchandise. Thus, Marine Harvest performs fewer selling functions for sales to the United States, at a different stage of marketing. We therefore preliminarily determine that Marine Harvest's sales to Japan are at a more advanced level of trade than the level of trade of the CEP.

Accordingly, for Aguas Claras and Marine Harvest, a level-of-trade adjustment is appropriate. However, neither company sells salmon or any other product at any other level of trade in their comparison markets than that of their fresh Atlantic salmon sales. Therefore, because the data available do not permit a determination that there is a pattern of consistent price differences between sales at different levels of trade in the comparison markets, section 773(a)(7)(B) of the Act permits a CEP offset to be made to NV. We granted such an offset equal to the amount of indirect expenses incurred in the comparison markets, but not exceeding the amount of the deductions made from the U.S. price in accordance with 772(d)(1)(D) of the Act. For Aguas

Claras, we made no LOT adjustment for comparisons to EP.

Finally, with respect to Camanchaca, we did not perform a level-of-trade analysis because this company does not have a viable comparison market.

*Currency Conversions*

We made currency conversions in accordance with section 773A of the Act. The Department's preferred source for daily exchange rates is the Federal Reserve Bank. The Federal Reserve Bank publishes daily exchange rates for Japanese yen, but not for Chilean pesos. For purposes of the preliminary results, we made conversions of figures denominated in Japanese yen based on the official exchange rates published by the Federal Reserve. For conversions of figures involving Chilean pesos, we relied instead on daily exchange rates published by Dow Jones News/Retrieval on-line system.

*Verification*

In accordance with section 782(i) of the Act, we intend to verify information determined to be acceptable for use in making our final determination.

*Suspension of Liquidation*

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of fresh Atlantic salmon from Chile, except for subject merchandise produced and exported by Camanchaca, Mares Australes, and Marine Harvest (which have *de minimis* weighted-average margins), that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice. We note that, as stated in the *Case History* section of the notice above, we have extended the provisional measures from four months to no more than six months.

The weighted-average dumping margins are as follows:

| Exporter/Manufacturer | Weighted-average margin percentage |
|---|---|
| Aguas Claras | 3.31 |
| Eicosal | 8.27 |
| Camanchaca | 0.18 |
| Mares Australes | 1.21 |
| Marine Harvest | 1.87 |
| All Others | 5.79 |

Section 735(c)(5)(A) of the Act directs the Department to exclude all zero and *de minimis* weighted-average dumping margins, as well as dumping margins determined entirely under facts available under section 776 of the Act, from the calculation of the ''all others'' rate. We have excluded the *de minimis* dumping margins for Camanchaca, Mares Australes, and Marine Harvest from the calculation of the ''all others'' rate. No dumping margins were based entirely on facts available.

*ITC Notification*

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

*Public Comment*

Case briefs must be submitted to the Assistant Secretary for Import Administration no later than April 13, 1998. Rebuttal briefs will be due no later than April 20, 1998. 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.

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, the hearing will tentatively be held on Monday, April 28, 1998, at 8:30 A.M., at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. 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 to participate if one is requested, must submit a written request within ten days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination no later than 135 days after the date of publication of this notice in the **Federal Register**.

This determination is published pursuant to section 733(f) of the Act.

Dated: January 8, 1998.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 98–1164 Filed 1–15–98; 8:45 am]

BILLING CODE 3510–DS–P

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meeting

**AGENCY:** Consumer Product Safety Commission, Washington, DC 20207.

**TIME AND DATE:** Wednesday, January 21, 1998, 10:00 a.m.

**LOCATION:** Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Open to the Public.

**MATTER TO BE CONSIDERED:**

*Bicycle Helmets*

The staff will brief the Commission on options for a final safety standard for bicycle helmets.

For a recorded message containing the latest agenda information, call (301) 504–0709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: January 14, 1998.

**Sadye E. Dunn,**

*Secretary.*

[FR Doc. 98–1287 Filed 1–14–98; 2:49 pm]

BILLING CODE 6355–01–M

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meeting

**AGENCY:** Consumer Product Safety Commission, Washington, DC 20207.

**TIME AND DATE:** Friday, January 23, 1998, 10:00 a.m.

**LOCATION:** Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Open to the Public.

**MATTER TO BE CONSIDERED:**

*Shopping Carts Petition CP 97–2*

The staff will brief the Commission on Petition CP 97–2 submitted by Mr. John S. Morse requesting that the Commission develop a standard for shopping cart stability.

For a recorded message containing the latest agenda information, call (301) 504–0709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: January 14, 1998.

**Sadye E. Dunn,**

*Secretary.*

[FR Doc. 98–1288 Filed 1–14–98; 2:49 am]

BILLING CODE 6355–01–M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### HQ USAF Scientific Advisory Board Meeting

The Going to Space Panel Meeting in support of the HQ USAF Scientific Advisory Board will meet in Washington, DC on January 20–21, 1998, from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings for the 1998 USAF Scientific Advisory Board Summer Study on Going to Space.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

**Barbara A. Carmichael,**

*Alternate Air Force Federal Register Liaison Officer.*

[FR Doc. 98–1156 Filed 1–15–98; 8:45 am]

BILLING CODE 3910–01–P

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by January 16, 1998. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before March 17, 1998.

**ADDRESSES:** Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506(c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (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 Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 13, 1998.

**Gloria Parker,**

*Deputy Chief Information Officer, Office of the Chief Information Officer.*

### Office of Postsecondary Education

*Type of Review:* Revision.

*Title:* European Community(EU)/ United States of America (US) Joint Consortia for Cooperation in Higher Education and Vocational Education.

*Abstract:* The EC/US Joint Consortia for Cooperation in a program that will support new types of cooperation and the exchanges between institutions of Higher Education in the U.S. and counterparts in the member states of the European Community.

*Additional Information:* This program's European translators need this clearance immediately in order to convert the information into eleven languages and clear the necessary governmental processes throughout Europe. This program must run simultaneously there and in America.

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs

*Reporting and Recordkeeping Hour Burden:* Responses: 80; Burden Hours: 2,400.

[FR Doc. 98–1116 Filed 1–15–98; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Advisory Council on Education Statistics, Policy Committee

**AGENCY:** National Center on Education Statistics, Education.

**ACTION:** Notice of closed meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Policy Committee of the Advisory Council on Education Statistics (ACES). Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

**DATES:** January 28, 1998.

**TIMES:** 9:00 a.m.-5:00 p.m., (closed).

**LOCATION:** 555 New Jersey Avenue, NW, Board Room #100, Washington DC.

**FOR FURTHER INFORMATION CONTACT:** Barbara Marenus, National Center on Education Statistics, 555 New Jersey Ave., NW, Room 400j, Washington, DC 20208–5530 (202) 219–1835.

**SUPPLEMENTARY INFORMATION:** The Advisory Council on Education Statistics (ACES) is established under Section 406(c)(1) of the Education Amendments of 1974, Pub. L. 93–380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Educational Research and Improvement and is responsible for advising on standards to insure that statistics and analyses disseminated by NCES are of high quality and are not subject to political influence. In addition; ACES is required to advise the Commissioner of NCES and the National Assessment Governing Board on technical and statistical matters related to the National Assessment of Education Progress (NAEP).

The proposed agenda for the Policy Committee's meeting includes the following:

- Review and discussion of cost estimates for planned procurements in the hear 2000. Because the discussion will include information on cost estimates on future procurements, this session must be closed to the public. The public disclosure of this information would be likely to significantly frustrate the implementation of planned agency action if conducted in open session. Such matters are protected by exemption (9)(B) of section 552(c) of title 5 U.S.C.

A summary of the activities and related matters, which are informative to the public and consistent with the policy of 5 U.S.C. 552b, will be available to the public within 14 days after the meetings. Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, NW, Room 400J, Washington, DC 20208–7575.

**Ricky Takai,**

*Acting Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 98–1153 Filed 1–15–98; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Department of Energy, Los Alamos National Laboratory

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos National Laboratory.

**DATES:** Saturday, January 24, 1998: 9:00 a.m.–12:00 p.m. 10:30 a.m. to 11:00 a.m. (public comment session).

**ADDRESSES:** San Ildefonso Pueblo, Tewa Center, State Route 4.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ann DuBois, Los Alamos National Laboratory Citizens' Advisory Board, 528 35th Street, Los Alamos, NM 87544, (505) 665–5048.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

9:00 a.m.
Call to Order
Adoption of Bylaws
Election of Officers
9:30 a.m. Old Business
10:00 a.m. New Business
10:30 a.m. Public Comment Session
12:00 p.m. Adjourn

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ms. Ann DuBois, at (505) 665–5048. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Joe Vozella, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185–5400.

Issued at Washington, DC on January 12, 1998.

**Rachel Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 98–1125 Filed 1–15–98; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Secretary of Energy Advisory Board; Notice of Open Meeting

**AGENCY:** Department of Energy.

**SUMMARY:** Consistent with the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

*Name:* Secretary of Energy Advisory Board—Task Force on Education.

*Dates and Times:* Monday, February 2, 1998, 9:00 a.m.–4:00 p.m.

*Addresses:* Madison Hotel, Dolley Madison Ballroom, 15th & M Streets, NW., Washington, DC.

*For Further Information Contact:* Bruce Bornfleth, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4040 or (202) 586–6279 (fax).

*Supplementary Information:* The purpose of the Task Force on Education is to provide information and recommendations to the Secretary of Energy Advisory Board on ways to make the Department's scientific, technical and supercomputing capabilities more available to our Nation's schools, colleges and universities, and to provide recommendations on how the Department can best enhance science, technology, engineering and mathematics education in the United States. The Task Force on Education will prepare a report for submission to the Secretary of Energy Advisory Board.

*Tentative Agenda:* Monday, February 2, 1998.

9–9:45 a.m. Welcome and Opening Remarks—Dr. Hanna Gray, Task Force Chairman and Secretary Fedrico Peña
9:45–10:00 a.m. Report on DOE's Initiatives
10:00–10:15 a.m. Break
10:15–12:00 a.m. Panel I: Discussion of DOE's Historical and Ongoing Education Activities
12:00–1:00 p.m. Lunch
1:00–2:30 p.m. Panel II: Overview of Federal Activities in Math/Science Education
2:30–3:30 p.m. Discussion of Task Force Action Plan
3:30–4:00 p.m. Public Comment Period

This tentative agenda is subject to change. The final agenda will be available at the meeting.

*Public Participation:* The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, DC, the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

*Minutes:* Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays. Information on the Task Force on Education and future reports may be found at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on January 13, 1998.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 98–1124 Filed 1–15–98; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP98–170–000]**

### National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

January 12, 1998.

Take notice that on January 5, 1998, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, NY 14203, filed in Docket No. CP98–170–000 a request pursuant to sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to install and operate a new sales tap, located in Mercer County, Pennsylvania, to render service to a new residential customer of National Fuel Gas Distribution Corporation (Distribution) under National's blanket certificate issued in Docket No. CP83–4–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

National proposes to construct and operate a new residential sales tap on its Line S, located in Mercer County, Pennsylvania, for delivery of approximately 150 Mcf annually of gas to Distribution, an existing firm transportation customer. National states the proposed sales tap is estimated to cost $1,500, for which National will be reimbursed by Distribution.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**David P. Boergers,**

*Acting Secretary.*

[FR Doc. 98–1089 Filed 1–15–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 1927–008]**

### PacifiCorp; Notice of Meeting

January 12, 1998.

A meeting will be convened by staff of the Office of Hydropower Licensing on February 4, 1998, at 10:00 a.m. at the Kingstad Meeting Center, Suite A, located at 850 SW Broadway, Portland, OR. The purpose of this meeting is to discuss PacifiCorp's October 10, 1997, additional information filing on the relicense application for the North Umpqua Project. The meeting will primarily focus on PacifiCorp's response to staff's information request on soil erosion and slope stability at the project's canals and flumes, and alternatives for obtaining the information needed. However, other issues will be discussed as time permits.

Any person wishing to attend or needing additional information should contact Vince Yearick at (202) 219–3073 or e-mail at vince.yearick@ferc.fed. us. Please notify Mr. Yearick by January 28, if you plan to atttend.

**David P. Boergers,**

*Acting Secretary.*

[FR Doc. 98–1090 Filed 1–15–98; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5950–7]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request; Exports From and Imports to the United States Under the OECD Decision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: ''Exports From and Imports To the United States Under the OECD Decision,'' EPA ICR Number 1647.02, OMB Control Number 2050–0143, which expires on January 31, 1998. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before February 17, 1998.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No.1647.02.

**SUPPLEMENTARY INFORMATION:**

*Title:* Exports from and imports to the United States under the OECD Decision OMB Control Number 2050–0143; EPA ICR No. 1647.02 expiring 1/31/98. This

is a request for extension of a currently approved collection.

*Abstract:* Authority to promulgate this rule is found in sections 2002(a) and 3017(a)(2) and (f) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and as amended by the Hazardous and Solid Waste Amendments, 42 U.S.C. 6901 *et seq.* The OECD Decision is considered legally binding on the United States under Articles 5(a) and 6(2) of the OECD Convention, 12 U.S.T. 1728. In addition, the OECD Decision and the rule implementing the OECD Decision (61 FR 16290–16316, April 12, 1996) ensure that exports and imports of recoverable hazardous waste between the U.S. and OECD member countries may proceed even though the U.S. is not yet a ''Party'' to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. The Office of Enforcement and Compliance Assurance, U.S. EPA, uses the information provided by each U.S. exporter and U.S. importer to determine compliance with the applicable OECD regulatory provisions. In addition, the information will be used to determine the number, origin, destination, and type of exports from and imports to the U.S. for tracking purposes and for reporting to the OECD. This information also will be used to assess the efficiency of the program.

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 numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 8/26/97 (62 FR 45248); no comments were received.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 8.74 hours for the U.S. exporter and 5.83 hours for the U.S. importer. These estimates include all aspects of the information collection including the time necessary to obtain and read the regulations and assess applicability, to complete a notification of intent to export hazardous waste, to complete the tracking document, sign and transmit copies of the tracking document, as well as the reduced response time (3 working days as compared to 30 days) to transmit a signed copy of a tracking document. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Estimated Number of Notification of Intent to Export:* 437.

*Estimated Number of Notification of Intent to Import:* 771.

*Estimated Total Annual Burden for Respondents:* 8,314 hours.

*Frequency of Response:* On occasion.

*Estimated Total Annualized Cost Burden:* $391,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No.1647.02 and OMB Control No. 2050–0143 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460, or Email:
farmer.sandy@epamail.epa.gov;
and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: January 12, 1998.

**Joseph Retzer,**

*Director, Regulatory Information Division.*

[FR Doc. 98–1134 Filed 1–15–98; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5950–5]**

## Pesticides; OMB Review of Information Collection Activities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of submission to OMB.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the Information Collection Request (ICR) entitled: Asbestos-Containing Materials in Schools Rule and Asbestos Model Accreditation Plan Rule [EPA ICR No. 1365.05; OMB Control No. 2070–0091] has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden.

The Agency is requesting that OMB renew for 3 years the existing approval for this ICR, which is scheduled to expire on March 31, 1998. A **Federal Register** document announcing the Agency's intent to seek the renewal of this ICR and the 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on October 3, 1997 (62 FR 51853). EPA did not receive any comments on this ICR during the comment period.

**DATES:** Additional comments may be submitted on or before February 17, 1998.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer at EPA by phone on (202) 260–2740, by e-mail: ''farmer.sandy@epamail.epa.gov,'' or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1365.05.

**ADDRESSES:** Send comments, referencing EPA ICR No. 1365.05 and OMB Control No. 2070–0091, to the following addresses:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Regulatory Information Division (Mailcode: 2137), 401 M Street, SW., Washington, DC 20460.
And to:

Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA 725 17th Street, NW., Washington, DC 20503.

**SUPPLEMENTARY INFORMATION:**

*Review Requested:* This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

*ICR Numbers:* EPA ICR No. 1365.05; OMB Control No. 2070–0091.

*Current Expiration Date:* Current OMB approval expires on March 31, 1998.

*Title:* Asbestos-Containing Materials in Schools Rule

*Abstract:* The Asbestos Hazard Emergency Response Act (AHERA) requires local education agencies (LEAs) to conduct inspections, develop

management plans, and design or conduct response actions with respect to the presence of asbestos-containing materials in school buildings. AHERA also requires states to develop model accreditation plans for persons who perform asbestos inspections, develop management control plans, and design or conduct response actions. This information collection addresses the burden associated with recordkeeping requirements imposed on LEAs by the asbestos in schools rule, and reporting and recordkeeping requirements imposed on states and training providers related to the model accreditation plan rule.

Responses to the collection of information are mandatory (see 40 CFR part 763, subpart E).

*Burden Statement:* The annual public reporting burden for this collection of information is estimated to range between 6 hours and 140 hours per response, depending upon the category of respondent, for an estimated 107,551 respondents making one or more submissions of information annually. These estimates include the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these regulations are displayed in 40 CFR part 9.

*Respondents/Affected Entities:* Entities potentially affected by this action are local education agencies and states with recordkeeping and/or reporting responsibilities under the Asbestos-Containing Materials in Schools rule, and training providers and states with recordkeeping and/or reporting responsibilities under the Model Accreditation Plan rule.

*Estimated No. of Respondents:* 107,551.

*Estimated Total Annual Burden on Respondents:* 2,367,293 hours.

*Frequency of Collection:* On occasion.

*Changes in Burden Estimates:* There is a decrease of 19,857 hours in the total estimated respondent burden as compared with that identified in the information collection request most recently approved by OMB, from 2,387,150 hours currently to an estimated 2,367,293 hours. Most of this decrease reflects the completion of startup costs associated with the Model Accreditation Plan. A smaller portion of the decrease is due to the reduction in the number of training providers and changes in the numbers of school buildings containing friable asbestos.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this document, as described above.

Dated: January 12, 1998

**Joseph Retzer,**

*Director, egulatory Information Division.*

[FR Doc. 98–1136 Filed 1–15–98; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–5487–9]**

## Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed January 05, 1998 Through January 09, 1998 Pursuant to 40 CFR 1506.9.

EIS No. 980000, Draft EIS, COE, MN, WI, Duluth-Superior Harbor Phase II, Dredge Material Management Plan, Cities of Duluth, St. Louis County, MN and Douglas County, WI, Due: March 02, 1998, Contact: Terry A. Long (313) 226–6758.

EIS No. 980001, Draft EIS, BLM, AK, Northern Intertie Project, Construction of 230 kV Transmission Line from Healy to Fairbanks, AK, Application for Right-of-Way Grant, Gold Valley Electric Association, AK, Due: March 05, 1998, Contact: Gary Foreman 1 (800) 437–7021.

EIS No. 980002, FINAL EIS, FHW, AK, Kenai River Bridge Crossing Project, Construction from Sterling Highway to Funny River Road, Funding, COE Section 10 and 404 Permits, US CGD Permit and EPA NPDES Permit, Kenai Peninsula, AK, Due: March 03, 1998, Contact: Jim Bryson (907) 586–7428.

EIS No. 980003, Draft EIS, UMC, CA, Tustin Marine Corps Air Station (MCAS) Disposal and Reuse, Implementation, Orange County, CA, Due: March 02, 1998, Contact: Cpt. George Opria (714) 726–5565.

EIS No. 980004, Draft EIS, AFS, AK, Canal-Hoya Timber Sale, Implementation, Stikine Area, Tongass National Forest, Value Comparison Unit (VCU), AK, Due: March 02, 1998, Contact: Scott Posner (907) 874–2323.

EIS No. 980005, DRAFT EIS, NPS, OR, Oregon Caves National Monument, General Management Plan, Development Concept Plan, Josephine County, OR, Due: March 13, 1998, Contact: Craig Ackerman (541) 592–2100.

### Amended Notices

EIS No. 970489, DRAFT EIS, DOE, KY, TN, OH, TN, Programmatic EIS—Alternative Strategies for the Long-Term Management and Use of Depleted Uranium Hexafluoride, Paducah Site, McCracken County, KY; Portsmouth Site, Pike County, OH; and K–25 Site on the Oak Ridge Reservation, Anderson and Roane Counties, TN, Due: April 23, 1998, Contact: Charles E. Bradley (301) 903–4781. Published FR—12–24–97—Due Date Correction.

EIS No. 970497, FINAL EIS, URC, UT, Provo River Restoration Project (PRRP), Riverine Habitat Restoration, Reconstruction and Realignment of the existing Provo River Channel and Floodplain System between Jordanell Dam and Deer River Reservoir, Wasatch County, UT, Due: February 06, 1998, Contact: Mark A. Holden (801) 524–3146. Published FR—1–2–98—Due Date Correction.

Dated: January 13, 1998.

**William D. Dickerson,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 98–1159 Filed 1–15–98; 8:45 am]

BILLING CODE 6560–50–U

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## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–5488–1]**

## Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 29, 1997 Through January 02, 1998 pursuant to the Environmental Review Process (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 dated April 11, 1997 (62 FR 16154).

**Draft EISs**

ERP No. D–FHW–C40141–NY Rating EC2, Judd Road Connector Transportation Improvements, Funding and COE Section 404 Permit, Village of New York Mills, Towns of New Hartford and Whitestown, Oneida County, NY.

*Summary:* EPA expressed environmental concerns about impacts to wetlands and recommended the Southern alignment and the single point interchange be chosen.

ERP No. D–FHW–G40146–NM Rating LO, New Mexico Highway 126 (NM–126), Cuba-La Cueva Road (also Known as Forest Highway 12) Improvement, COE Section 404 Permit and NPDES Permit, Sandoval and Rio Arriba Counties, NM.

*Summary:* EPA had no objection to the selection of the lead agency's preferred alternative as described in the DEIS.

ERP No. D–GSA–J81009–CO Rating EC2, Denver Federal Center Master Site Plan, Implementation, City of Lakewood, Jefferson County, CO.

*Summary:* EPA expressed environmental concerns regarding potential water quality and wetland impacts. EPA requested that these issues be fully addressed in the final EIS. EPA also requested that clarification on how future development relate to the on going clean-up under RCRA and CERCLA.

ERP No. DS–COE–G32054–00 Rating LO, Red River Waterway, Louisiana, Texas, Arkansas and Oklahoma and Related Projects, New and Updated Information, Red River Below Denison Dam Levee Rehabilition, Implementation, Hempstead, Lafayette and Miller Counties, AR.

*Summary:* EPA expressed no objection to the selection of the mitigation measures as described in the EIS based on the Corp's preferred alternative.

ERP No. DS–USA–E65040–MS Rating EC2, Camp Shelby Continued Military Training Activities, Use of National Forest Lands, Updated Information, Final Site Selection Authorization for Implementation of the Proposed G.V. (Sonny) Montgomery Ranges, Special Use Permit, DeSoto National Forest, Forrest, George and Perry Counties, MS.

*Summary:* EPA expressed environmental concerns regarding potential wetland, wildlife habitate loss/modification and noise impacts. EPA requested that additional information on these issues be provided in the final document.

ERP No. D1–FAA–C51020–NY Rating EC2, Terminal Doppler Weather Radar (TDWR) Installation and Operation, Serve the John F. Kennedy International Airports (JFK) and La Guardia (LFA), Site Specific, Air Station Brooklyn, Borough of Queens, King County, NY.

*Summary:* EPA expressed environmental concerns regarding potential hazardous waste and carbon monoxide air quality impacts. EPA requested that FAA commit to comprehensively characterize any contamination prior to implementation and do carbon monoxide hot spot analysis.

**Final EISs**

ERP No. F–DOE–E09802–SC, Savannah River Site, Shutdown of the River Water System (DOE/EIS–0268D), Implementation, Aiken, SC.

*Summary:* EPA continues to express concerns about the project's ecological risks and impacts on endangered species. EPA encourages completion of consultations with the Natural Resources Trustees before issuing any CERCLA Record of Decision on the River Water Distribution System.

ERP No. F–FHW–C40138–NY, NY–17 Highway Conversion from a Partial to a Full Access Control Facility, Five-Mile Point to Occanum and NY–17 Rehabilitation or Reconstruction, Funding and COE Section 404 Permit Issuance, Towns of Kirkwood and Windsor, Broome County, NY.

*Summary:* EPA's concerns were addressed in the final EIS and has no objections to implementing the project as proposed.

ERP No. F–TVA–E06017–AL, Bellefonte Nuclear Plant Conversion Project, Construction and Operation, NPDES Permit and COE Section 404 Permit, Tennessee River near Hollywood, AL.

*Summary:* EPA expressed environmental concerns primarily involve the EIS connected issue of impacts associated with the construction of a natural gas pipeline (separate NEPA issue and federal lead agency) logically needed to adequately supply the proposed conversion of Bellefonte to natural gas. Proposed coordination with local residents was also recommended.

**Regulations**

ERP No. R–ACH–A99216–00, 36 CFR part 800—Revised Regulation Implementing Section 106 of the National Historic Preservation Administration.

*Summary:* EPA's primary issue is the definition of ''undertaking'' EPA would like to resolve interpretation of this definition before the regulations are adopted as final.

Dated: January 13, 1998.

**William D. Dickerson,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 98–1160 Filed 1–15–98; 8:45 am]

BILLING CODE 6560–50–U

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5950–6]**

## Agency Information Collection Activities OMB Responses

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). 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 numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

**FOR FURTHER INFORMATION CONTACT:** Call Sandy Farmer at (202) 260–2740, or E-mail at ''farmer.sandy@epamail.epa.gov,'' and please refer to the appropriate EPA Information Collection Request (ICR) Number.

**SUPPLEMENTARY INFORMATION:**

### OMB Responses to Agency Clearance Requests

*OMB Approvals*

EPA ICR No. 1503.03; Data Acquisition for Registration; was approved 12/04/97; OMB No. 2070–0122; expires 12/31/2000.

EPA ICR No. 1250.05; Request for Contractor Access to TSCA Confidential Business Information; was approved 12/05/97; OMB No. 2070–0075; expires 12/31/2000.

EPA ICR No. 1666.03; NESHAP Subpart O: National Emission Standards for Hazardous Air Pollutants (NESHAP) for Commercial Ethylene Oxide Sterilization and Fumigation Operations; was approved 12/05/97; OMB No. 2060–0283; expires 12/31/2000.

EPA ICR No. 1678.03; National Emission Standards for Magnetic Tape Manufacturing Operations—Subpart EE; was approved 12/05/97; OMB No. 2060–0326; expires 12/31/2000.

EPA ICR No. 0586.08; Preliminary Assessment Information Rule (PAIR)—TSCA Section 8(a); was approved 12/09/97; OMB No. 2070–0054; expires 12/31/2000.

EPA ICR No. 1611.03; National Emission Standards for Hazardous Air Pollutants (NESHAP) for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; was approved 12/09/97; OMB No. 2060–0327; expires 12/31/2000.

EPA ICR No. 1287.05; Questionnaires for Reviewing Operations and Maintenance (O&M), Biosolids Use (Biosolids), Combined Sewer Overflow (CSO), and Storm Water (SW) Awards Nominees under the NWMEAP; was approved 12/17/97; OMB No. 2040–0101; expires 12/31/2000.

EPA ICR No. 1805.01; National Emissions Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills (Proposed Rule); was approved 12/22/97; OMB No. 2060–0377; expires 12/31/2000.

EPA ICR No. 1767.02; Reporting and Recordkeeping Requirements for Primary Aluminum Reduction Plants; was approved 12/19/97; OMB No. 2060–0374; expires 12/31/2000.

EPA ICR No. 1591.08; Regulation of Fuels and Fuel Additives: Baseline Requirements for Gasoline Produced by Foreign Refiners; was approved 12/23/97; OMB No. 2060–0277; expires 12/31/2000.

*Change in Expiration Date*

EPA ICR No. 1778.01; Authorization of Indian Tribe Hazardous Waste Program; OMB No. 2050–0155; expiration date was changed from 08/31/99 to 11/30/97.

*OMB Disapproval*

EPA ICR 1811.01; National Emission Standards for Hazardous Air Pollutant for Polyester Polyols Production; was disapproved by OMB 12/10/97.

Dated: January 12, 1998.

**Joseph Retzer,**

*Division Director, Regulatory Information Division.*

[FR Doc. 98–1135 Filed 1–15–98; 8:45 am]

BILLING CODE 6560–50–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5950–8]**

## Notice of Proposed Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; Request for Public Comment.

**SUMMARY:** In accordance with section 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund amendments and Reauthorization Act of 1986 (''CERCLA''), 42 U.S.C. 9622, notification is hereby given that a proposed purchaser agreement associated with the Grant Chemical Superfund Site in Philadelphia, PA, was executed by the Agency on September 30, 1997, and is subject to final approval by the Department of Justice. The Purchaser Agreement would resolve certain potential EPA claims under section 107 of CERCLA, 42 U.S.C. 9607, against National Street Associates, Inc., a Pennsylvania Corporation (''the Purchasers''). The settlement would require the purchaser to pay a principal payment of $15,500 to the Hazardous Substance Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107.

**DATES:** Comments must be submitted on or before February 17, 1998.

**AVAILABILITY:** The proposed agreement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107. A copy of the proposed agreement may be obtained from Suzanne Canning, U.S. Environmental Protection Agency, Regional Docket Clerk (3RC00), 841 Chestnut Street, Philadelphia, PA 19107. Comments should be forwarded to Suzanne Canning at the address above.

**FOR FURTHER INFORMATION CONTACT:**

Rodney T. Carter (3RC21), Senior Assistant Regional counsel, U.S. Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107; (215) 566–2478.

**Thomas Voltaggio,**

*Regional Administrator, Region III.*

[FR Doc. 98–1132 Filed 1–15–98; 8:45 am]

BILLING CODE 6560–50–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5949–3]**

## Lorentz Barrel and Drum Superfund Site; Notice of Proposed Administrative Settlement

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA,'' commonly referred to as Superfund), 42 U.S.C., 9622(i) and section 7003(d) of the Resource Conservation and Recovery Act, as amended (''RCRA''), 42 U.S.C. 6973, notification is hereby given of a proposed cost recovery administrative settlement concerning the *Lorentz* Barrel and Drum Superfund Site in San Jose, CA (the ''Site''). The United States Environmental Protection Agency (''EPA'') is proposing to enter into a *de minimis* settlement pursuant to section 122(g)(4) of CERCLA. This proposed settlement is intended to resolve the liabilities under CERCLA and RCRA of 42 *de minimis* parties for all past and future response costs associated with the *Lorentz* Barrel and Drum Site. The names of the settling parties are listed below in the Supplementary Information section. These 42 parties collectively have agreed to pay $1,042,296.53 to EPA and $490,492.51 to the California Department of Toxic Substances Control (''DTSC'').

EPA is entering into this agreement under the authority of section 122(g)(4) of CERCLA. Section 122(g) authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund sites without incurring substantial transaction costs. A *de minimis* party is one that contributed a minimal amount of hazardous substances at a site, and contributed hazardous substances that are not significantly more toxic or of significantly greater hazardous effect

than other hazardous substances at a site. Under the authority granted by Section 122(g), EPA proposes to settle with 42 potentially responsible parties at the *Lorentz* Barrel and Drum Superfund Site, each of whom is responsible for no more than one percent of the total hazardous substances sent to the Site, as that total is reflected on the July 29 waste-in list developed by EPA.

*De minimis* settling parties will be required to pay their allocated share of all past response costs and the estimated future response costs at the *Lorentz* Barrel and Drum Site, including all federal and state response costs, and a premium to cover the risks of remedy failure and cost overruns.

EPA may withdraw or withhold its consent to this settlement if comments received during the 30-day public comment period disclose facts of considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

**DATES:** Pursuant to section 122(i)(1) of CERCLA and section 7003(d) of RCRA, EPA will receive written comments relating to this proposed settlement on or before February 17, 1998. If EPA receives a request for a public meeting on or before February 17, 1998, pursuant to section 7003(d) of RCRA, EPA will hold a public meeting.

**ADDRESSES:** Comments and requests for a public meeting should be addressed to the Docket Clerk, U.S. EPA Region IX (RC–1), 75 Hawthorne Street, San Francisco, CA 94105 and should refer to: *Lorentz* Barrel and Drum Superfund Site, San Jose, CA, U.S. EPA Docket No. 97–10. A copy of the proposed Administrative Order on Consent may be obtained from the Regional Hearing Clerk at the address provided above. EPA's response to any comments received will be available for inspection from the Regional Hearing Clerk; at the Dr. Martin Luther King, Jr. Public Library, Reference Desk, 180W. San Carlos Street, San Jose, CA 95113; and at San Jose State University, Clark Library, Government Publications Desk, One Washington Square, San Jose, CA 95192.

**FOR FURTHER INFORMATION CONTACT:** Vicky Lang, Assistant Regional Counsel, (415) 744–1331, U.S. Environmental Protection Agency (RC–1), Regional IX, 75 Hawthorne Street, San Francisco, CA 94105.

**SUPPLEMENTARY INFORMATION:** The proposed *de minimis* settlement resolves EPA and DTSC's claims under section 107 of CERCLA and section 7003 of RCRA against the following respondents: Almaden Vineyards Inc., American Home Foods, Apache Enterprises, Apex Marble, Armour Grocery Products Co., Beatrice Foods Co., Borden Inc., Bruce Church Co., Cal Stone, California Cheese Co., California Roofing, Concrete Chemicals, FMC Corp., Four Phase, Garratt-Callahan Co., Gibson Homans Co., Globe Union Inc., Hal Crumly Inc., Industrial Models, ITT, L.M. Quartaroli, Libby Labs, Monsanto Chemical Co., Olocco Agricultural Pest Control, Pacific Coast Lacquer, Pacific Coast Producers, Power & Communication Systems, Precision Technical Coatings, Protect-o-Top, Racor Industries Inc., Safeway Stores Inc., Savnik & Co. Inc., SCM Corp. Glidden Div., Sears Roebuck & Co., Stokely Van Camp, Teledyne McCormick Selph, Teralive Mfg., Tri-Valley Growers Packing, U.S. Printing Ink Corp., United Technologies Corp., Western Farm Service, and Witco Chemical Co.

Dated: January 8, 1998.

**Michael Hingerty,**

*Acting Director, Superfund Division.*

[FR Doc. 98–1131 Filed 1–15–98; 8:45 am]

BILLING CODE 6560–50–M

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5951–4]**

## Proposed CERCLA Administrative Cost Recovery Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; Stickney Avenue Landfill, Toledo, OH

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(I), notification is hereby given of a proposed administrative settlement by consent, pursuant to CERCLA sections 106(a), 107 and 122(h), 42 U.S.C. sections 9606(a), 9607 and 9622, concerning the Stickney Avenue Landfill and Tyler Street Landfill Sites in Lucas County, Toledo, Ohio. The settling parties are listed in section B of this document.

The settlement requires that the settling parties construct multi-layer landfill cover systems over the Stickney Avenue Landfill, the Tyler Street Landfill, and the central portion of the XXKem facility, as defined in the Enforcement Action Memoranda for the Stickney Avenue and Tyler Street Landfills. The settlement includes EPA's covenant not to sue the settling parties pursuant to section 106 and 107 of CERCLA, 42 U.S.C. sections 9606 and 9607, for the work which is to be completed pursuant to the settlement, and for the recovery of past response costs and the payment of oversight costs. The EPA's authority to enter into this administrative settlement agreement was conditioned upon the approval of the Attorney General of the United States (or her delegatee); this approval has been obtained.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the 7th Floor Records Center, (for address, see below).

**DATES:** Comments must be submitted on or before February 17, 1998.

**ADDRESSES:** Comments should be addressed to Sherry Estes, Office of Regional Counsel, Mail Code C–14J, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604–3590, and should reference the Stickney Avenue Landfill and Tyler Street Landfill Sites, Toledo, Ohio.

The proposed AOC embodying the settlement agreement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, Region 5, Superfund Division Record Center (address above), or a copy of the proposed AOC may be obtained from Sherry L. Estes.

**FOR FURTHER INFORMATION CONTACT:** Sherry L. Estes, Office of Regional Counsel, (address above) or call (312) 886–7164.

**SUPPLEMENTARY INFORMATION:**

### A. Background

The Stickney Avenue Landfill and Tyler Avenue Landfill are located in Lucas County, Toledo, Ohio. The Sites are 50-acre and 41-acre, respectively, inactive municipal, commercial, industrial and institutional landfills located along the Ottawa River, upstream from the point where the Ottawa River discharges into the Maumee Bay and Lake Erie. Fifty-eight known dump sites, including Stickney

and Tyler, along with combined sewer overflows, agricultural pollution and sediment desposition, have caused severe pollution problems in the Maumee Bay.

Separate Engineering Evaluations/Cost Analyses (EE/CAs) were performed for the Stickney Avenue and Tyler Street Landfills, which studied the nature and extent of the contamination at the sites and evaluated the presumptive remedy for municipal landfills. Based upon the analyses contained in the EE/CA, EPA issued proposed plans for public comment from October 16, 1995, through December 15, 1995 and responded to the substantive comments received during this period. Enforcement Action Memoranda (EAM), embodying the EPA's response action decision for the two sites, were issued on January 22, 1996. The EAM call for the installation of a multi-layer cover system in compliance with the functional requirements of the Ohio Administrative Code, landfill gas collection and passive venting to the atmosphere, and institutional controls.

Immediately south of the Stickney Avenue Landfill is the XXKem facility, which formerly was occupied by companies which performed waste solvent and waste fuel oil blending operations. This site is divided by a fence line which separates the front (east) portion from the central portion, which contains a closed lagoon. The EAM for the Stickney Avenue Landfill also calls for the same multi-layer cover system that will be installed at Stickney to be installed over the closed lagoon area. It should also be noted that further EPA response action decisions are anticipated for the central portion of the XXKem facility.

**B. Settling Parties**

Proposed settling parties are: Allied Signal Inc.; AP Parts International, Inc.; Blade Communications, Inc.; BFI Waste Systems of North America, Inc., successor to Browning-Ferris Industries of Ohio and Michigan, Inc.; Centerior Energy Corporation; Chevron U.S.A., Inc.; Chrysler Corporation; City of Toledo, a municipal corporation; Cooper Industries; Cytec Industries, Inc.; Dana Corporation; E.I. du Pont de Nemours and Company; Envirosafe Services of Ohio, Inc. f/k/a Fondessey Enterprises Inc.; Flower Hospital; Gencorp, Inc.; Mercy Hospital of Toledo, Ohio Inc.; Owens-Illinois, Inc. and Libbey Glass Inc.; Riverside Hospital; Northcoast Health Systems, Inc.; St. Charles Hospital of Oregon, Ohio; St. Luke's Hospital; St. Vincent Medical Center, Inc.; The Toledo Hospital; Promedica Health Systems, Inc.; City Auto Stamping Division of Shellar-Globe Corporation, n/k/a United Technologies Automotive Systems, Inc.; and Waste Management of Ohio, Inc.

**C. Description of Settlement**

In exchange for the settling parties' agreement to design, finance and construct the multi-layer cover systems at the Stickney Avenue and Tyler Street Landfills and the central portion of the XXKem facility, according to the EAM for the Stickney and Tyler sites, EPA covenants not to sue or issue administrative orders to the settling parties, pursuant to section 106 and 107 of CERCLA, as described above. The EAM estimated that the cumulative costs for the multi-layer cover systems at Stickney, Tyler and the central portion of the XXKem sites would total approximately $26 million.

During the 1995 public comment period on the proposed plans, several commenters raised concerns that the proposed plans did not call for the installation of a leachate collection system at the sites. However, in the EAM, EPA found that the installation of multi-layer cover systems should obtain the rapid reduction in risk to human health and to the Ottawa River which is anticipated in the EE/CAs. The Scope of Work which is incorporated into the proposed AOC calls for the detailed monitoring of the leachate and modeling of the reduction in risk. If, contrary to the expectations of the settling parties and EPA, the anticipated reduction in risk is not achieved, EPA retains the authority to determine that additional response actions are required. While the settling parties would not be required to perform these additional response actions under the terms of the proposed AOC, EPA has reserved its rights to initiate additional enforcement actions under sections 106(a) and 107 of CERCLA.

EPA is not, pursuant to this document, requesting further comment on the response action determinations embodied in the EAM. This Notice requests comment on the fairness and appropriateness of the proposed AOC, including the AOC's covenant not to sue provisions. EPA's unreimbursed past costs total approximately $500,000; oversight costs for the work would be completed pursuant to the proposed AOC are estimated at $200,000. Thus, in exchange for compromising potential claims for approximately $700,000 against the settling parties, EPA is assuring that removal actions worth over $26 million are accomplished at the Stickney and Tyler sites, and the central portion of the XXKem facility.

If, after the consideration of comments during the public comment period, EPA retains its prior consent to the AOC and finalizes the settlement, the Contribution Protection Section of the AOC states EPA's belief that the settling parties are entitled to contribution protection to the extent provided by section 113(f) and 122(h)(4), 42 U.S.C. sections 9613(f)(2), and 9622(h)(4). It should also be noted that the contribution protection section of the AOC expressly reserves contribution claims as to the central portion of the XXKem facility. Therefore, the settling parties have reserved any claims that they might have as against each other for the central portion of the XXKem facility, and would also be subject to contribution claims for the central portion of the XXKem facility, to the extent that such claims exist, from entities which are not parties respondent to this proposed AOC.

Dated: January 13, 1998.

**William E. Muno,**

*Director, Superfund Division.*

[FR Doc. 98–1247 Filed 1–15–98; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

January 12, 1998.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of

information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before March 17, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to jboley@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0633.

*Title:* Station Licenses—Sections 73.1230, 74.165, 74.432, 74.564, 74.664, 74.765, 74.832, 74.965, and 74.1265.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Businesses or other for profit; not-for-profit institutions.

*Number of Respondents:* 10,000.

*Estimated Time Per Response:* .083 hours.

*Frequency of Response:* On occasion reporting requirement.

*Cost to Respondents:* $14,000.

*Total Annual Burden:* 830 hours.

*Needs and Uses:* Licensees of broadcast stations are required to post, file or have available a copy of the instrument of authorization at the station and/or transmitter site. The data is used by FCC staff in field investigations and the public to ensure that a station is licensed and operating in the manner specified in the license. The information posted at the transmitter site are used by the public and FCC staff to know by whom the transmitter is licensed.

*OMB Control No.:* 3060–0627.

*Title:* Application for AM Broadcast Station License.

*Form No.:* FCC Form 302–AM.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Businesses or other for profit.

*Number of Respondents:* 350.

*Estimated Time Per Response:* Direct of measurement of power applications—206 hours (8 hours per respondent, 8 hours per legal, 190 hour per engineer); new license applications—1,016 (40 hours per respondent, 16 hours per attorney, 960 hours per engineer).

*Frequency of Response:* On occasion reporting requirement.

*Cost to Respondents:* $26,075,000.

*Total Annual Burden:* 8,400 hours.

*Needs and Uses:* Licensees and permittees of AM broadcast stations are required to file FCC Form 302–AM to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities of these stations. Additionally, when changes are made to an AM station which alter the resistance of the antenna system, a licensee must initiate a determination of the operating power by the direct method. The results of this are reported to the Commission using the FCC 302–AM. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit, and to update FCC station files. Data is then extracted from FCC 302–AM for inclusion in the subsequent license to operate the station.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 98–1109 Filed 1–15–98; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL ELECTION COMMISSION

### Sunshine Act Notice

**AGENCY:** Federal Election Commission.

**FEDERAL REGISTER NUMBER:** 1169.

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Thursday, January 22, 1998, 10:00 a.m. Meeting open to the public.

**THE FOLLOWING ITEM HAS BEEN ADDED TO THE AGENDA:** Rulemaking Petition of National Reform Party Organizing Committee, John J. Wheeling, Treasurer.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

**Marjorie W. Emmons,**

*Secretary of the Commission.*

[FR Doc. 98–1286 Filed 1–14–98; 2:48 pm]

BILLING CODE 6715–01–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1193–DR]**

### Territory of Guam; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for Territory of Guam (FEMA–1193-DR), dated December 17, 1997, and related determinations.

**EFFECTIVE DATE:** December 21, 1997.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3630.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as authorized by the President in a letter dated December 17,1997, FEMA is extending the time period for Direct Federal assistance at 100 percent Federal funding for total eligible costs approved by FEMA through December 23, 1997, for the Territory of Guam.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 98–1142 Filed 1–15–98; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1193–DR]**

### Territory of Guam; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the Territory of Guam (FEMA–1193–DR), dated December 17, 1997, and related determinations.

**EFFECTIVE DATE:** December 29, 1997.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3630.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective December 17, 1997.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 98–1144 Filed 1–15–98; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1194–DR]**

### The Commonwealth of the Northern Mariana Islands; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the Commonwealth of the Northern Mariana Islands (FEMA–1194–DR), dated December 24, 1997, and related determinations.

**EFFECTIVE DATE:** January 2, 1998.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective December 17, 1997.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 98–1143 Filed 1–15–98; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 10:00 a.m., Wednesday, January 21, 1998.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Joseph R. Coyne, Assistant to the Board; 202–452–3204.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 14, 1998.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 98–1222 Filed 1–14–98; 11:23 am]

BILLING CODE 6210–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Health Care Policy and Research

### Meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation

**AGENCY:** Agency for Health Care Policy and Research, HHS.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation.

**DATES:** The meeting will be held on Thursday, February 12, 1998 from 9:00 a.m. to 4:00 p.m.

**ADDRESSES:** The meeting will be held at the Natcher Conference Center, National Institutes of Health, 45 Center Drive, Bethesda, MD 20892.

**FOR FURTHER INFORMATION CONTACT:** Nancy Foster, Coordinator of the Advisory Council at the Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 502, Rockville, MD 20852, (301) 594–1349 ext. 1307.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Linda Reeves, Assistant Administrator for Equal Opportunity, AHCPR, on (301) 594–6655 ext. 1055 no later than February 8, 1998.

**SUPPLEMENTARY INFORMATION:**

#### I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) establishes the National Advisory Council for Health Care Policy, Research, and Evaluation. The Council provides advice to the Secretary and the Administrator, Agency for Health Care Policy and Research (AHCPR), on matters related to AHCPR activities to enhance the quality, appropriateness, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services.

The Council is composed of members of the public appointed by the Secretary and Federal ex-officio members.

#### II. Agenda

On Thursday, February 12, 1998, the meeting will begin at 9:00 a.m., with the call to order by the Council Chairman. The Administrator, AHCPR, will update the status of current Agency funding, programs, and initiatives. The Council will then discuss strategic directions for the Agency, ethical dilemmas in health services research, and how to assure AHCPR research is meeting the needs of clinicians.

The meeting will adjourn at 4:00 p.m. Agenda items are subject to change as priorities dictate.

Dated: January 9, 1998.

**John M. Eisenberg,**

*Administrator.*

[FR Doc. 98–1107 Filed 1–15–98; 8:45 am]

BILLING CODE 4160–90–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Arthritis Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting is open to the public.

*Name of Committee*: Arthritis Advisory Committee.

*General Function of the Committee*: To provide advice and recommendations to the agency on FDA regulatory issues.

*Date and Time*: The meeting will be held on February 20, 1998, 8 a.m. to 5 p.m.

*Location*: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

*Contact Person*: Kathleen R. Reedy or LaNise S. Giles, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–

741–8138 (301–443–0572 in the Washington, DC area), code 12532. Please call the Information Line for up-to-date information on this meeting.

*Agenda*: The committee will discuss preliminary planning of a claims structure for a future guidance for the development of drugs, biologics, and devices for the treatment of osteoarthritis.

*Procedure*: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 13, 1998. Oral presentations from the public will be scheduled between approximately 8 a.m. and 9 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 13, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 9. 1998.

**Michael A. Friedman,**

*Deputy Commissioner for Operations.*

[FR Doc. 98–1083 Filed 1–15–98; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Council on Drug Abuse, National Institute on Drug Abuse (NIDA) on February 3–4, 1998, at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

On February 3, from 9 a.m. to 4 p.m., in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, this portion of the meeting will be closed to the public for the review, discussion, and evaluation of grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

On February 4, from 9 a.m. to 5 p.m., this portion of the meeting will be open to the public for announcements and reports of administrative, legislative, and program developments in the drug abuse field. Attendance by the public will be limited to space available.

A summary of the meeting and a roster of committee members may be obtained from Ms. Camilla L. Holland, NIDA Committee Management Officer, National Institutes of Health, Parklawn Building, Room 10–42, 5600 Fishers Lane, Rockville, MD 20857, (301/443–2755).

Substantive program information may be obtained from Dr. Teresa Levitin, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville MD 20857, (301/443–2755).

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Levitin in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs)

Dated: January 8, 1998.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 98–1121 Filed 1–15–98; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

*Purpose/Agenda:* To review individual grant applications.

*Name of SEP:* Behavioral and Neurosciences.
*Date:* January 20, 1998.
*Time:* 11:00 a.m.
*Place:* NIH, Rockledge 2, Room 5060; Telephone Conference.
*Contact Person:* Dr. Samuel Rawlings, Scientific Review Administrator, 6701 Rockledge Drive, Room 5060, Bethesda, MD 20892, (301) 435–1243.

*Name of SEP:* Biological and Physiological Sciences.
*Date:* January 20, 1998.
*Time:* 3:00 p.m.
*Place:* NIH, Rockledge 2, Room 4148; Telephone Conference.
*Contact Person:* Dr. Philip Perkins, Scientific Review Administrator, 6701 Rockledge Drive, Room 4148, Bethesda, MD 20892, (301) 435–1718.

*Name of SEP:* Biological and Physiological.
*Date:* January 21, 1998.
*Time:* 12:00 p.m.
*Place:* NIH, Rockledge 2, Room 4150; Telephone Conference.
*Contact Person:* Dr. Marcia Litwack, Scientific Review Administrator, 6701 Rockledge Drive, Room 4150, Bethesda, MD 20892, (301) 435–1719.

*Name of SEP:* Biological and Physiological Sciences.
*Date:* January 8, 1998.
*Time:* 4:00 p.m.
*Place:* NIH, Rockledge 2, Room 4150; Telephone Conference.
*Contact Person:* Dr. Marcia Litwack, Scientific Review Administrator, 6701 Rockledge Drive, Room 4150, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

*Name of SEP:* Biological and Physiological Sciences.
*Date:* February 22, 1998.
*Time:* 6:00 p.m.
*Place:* Hyatt Regency, Bethesda, MD.
*Contact Person:* Dr. Sooja Kim, Scientific Review Administrator, 6701 Rockledge Drive, Room 5178, Bethesda, MD 20892, (301) 435–1780.

*Name of SEP:* Biological and Physiological.
*Date:* February 18, 1998.
*Time:* 11:00 a.m.
*Place:* NIH, Rockledge 2, Room 9112.
*Contact Person:* Dr. Mushtaq Khan, Scientific Review Administrator, 6701 Rockledge Drive, Room 4124, Bethesda, MD 20892, (301) 435–1778.

*Name of SEP:* Biological and Physiological Sciences.
*Date:* February 23, 1998.
*Time:* 2:00 p.m.
*Place:* NIH, Rockledge 2, Room 6168; Telephone Conference.
*Contact Person:* Dr. Syed Amir, Scientific Review Administrator, 6701 Rockledge Drive, Room 6168, Bethesda, MD 20892, (301) 435–1043.

*Name of SEP:* Biological and Physiological Sciences.
*Date:* February 24, 1998.
*Time:* 2:00 p.m.
*Place:* NIH, Rockledge 2, Room 4172; Telephone Conference.
*Contact Person:* Dr. Donald Schneider, Scientific Review Administrator, 6701 Rockledge Drive, Room 4172, Bethesda, MD 20892, (301) 435–1165.

*Name of SEP:* Multidisciplinary Sciences.
*Date:* March 18–20, 1998.
*Time:* 6:00 p.m.
*Place:* Radisson Hotel, Los Angeles, CA.
*Contact Person:* Dr. Bill Bunnag, Scientific Review Administrator, 6701 Rockledge Drive,

Room 5212, Bethesda, MD 20892, (301) 435–1177.

The meetings will be closed in accordance with the provisions set forth in secs. 552(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 39.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: January 9, 1998.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 98–1120 Filed 1–15–98; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review Advisory Committee Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Center for Scientific Review Advisory Committee, February 17–18, 1998, Building 31C, Conference Room 6, National Institutes of Health, Bethesda, MD 20892.

The entire meeting will be open to the public from 8:30 a.m. on February 17 to adjournment on February 18. The meeting will include, among other topics, a discussion of some recent experiences and experiments in streamlining the peer review system. Attendance by the public will be limited to space available.

The Office of Committee Management, Center for Scientific Review, Rockledge 2 Building, Suite 3016, National Institutes of Health, Bethesda, MD 20892–7778, telephone (301) 435–1124, will furnish a summary of the meeting and a roster of the committee members.

Dr. Samuel Joseloff, Executive Secretary of the Committee, Rockledge 2 Building, Suite 3176, National Institutes of Health, Bethesda, MD 20892–7762, phone (301) 435–0691, will provide substantive program information upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary at least two weeks in advance of the meeting.

Dated: January 8, 1998.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 98–1122 Filed 1–15–98; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4235–N–38]**

### 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:** Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD 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, 1998 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.C.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 interests 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/available or suitable/unavailable.

For properties listed as 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 Mark Johnston 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: ARMY: Mr. Jeff Holste, CECPW–FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22315; (703) 428–6318;

INTERIOR: Ms. Lola Knight, Department of the Interior, 1849 C Street, NW, Mail Stop 5512–MIB, Washington, DC 20240; (202) 208–4080; GSA: Mr. Brain K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–2059; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–7342; (These are not toll-free numbers).

Dated: January 8, 1998.

**Fred Karnas, Jr.,**

*Deputy Assistant Secretary for Economic Development.*

**TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM, FEDERAL REGISTER REPORT FOR 01/16/98**

**Suitable/Available Properties**

*Buildings (by State)*

Alaska

Bldg. 303
Fort Richardson
Anchorage AK 99505–6500
Landholding Agency: Army
Property Number: 219740272
Status: Excess
Comment: 13,056 sq. ft., presence of asbestos/lead paint, most recent use—family housing, off-site use only

Bldg. 304
Fort Richardson
Anchorage AK 99505–6500
Landholding Agency: Army
Property Number: 219740273
Status: Excess
Comment: 13,506 sq. ft., presence of asbestos/lead paint, most recent use—family housing, off-site use only

Bldgs. 312, 313
Fort Richardson
Anchorage AK 99505–6500
Landholding Agency: Army
Property Number: 219740275
Status: Excess
Comment: 13,506 sq. ft., presence of asbestos/lead paint, most recent use—family housing, off-site use only

Bldgs. 420, 422, 426, 430
Fort Richardson
Anchorage AK 99505–6500
Landholding Agency: Army
Property Number: 219740276
Status: Excess
Comment: 13,056 sq. ft., presence of asbestos/lead paint, most recent use—family housing, off-site use only

Bldg. 660
Fort Richardson
Anchorage AK 99505–6500
Landholding Agency: Army
Property Number: 219740277
Status: Excess
Comment: 21,124 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 670
Fort Richardson
Anchorage AK 99505–6500
Landholding Agency: Army
Property Number: 219740278
Status: Excess
Comment: 24,763 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 1101
Fort Richardson
Anchorage AK 99505–6500
Landholding Agency: Army
Property Number: 219740279
Status: Excess
Comment: 16,702 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 1102
Fort Richardson
Anchorage AK 99505–6500
Landholding Agency: Army
Property Number: 219740280
Status: Excess
Comment: 16,327 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Arizona

5 Bldgs.
Fort Huachuca
73910, 76912, 82014, 82017, 84005
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219740281
Status: Excess
Comment: various sq. ft., presence of asbestos/lead paint, most recent use—motor pool/admin., off-site use only

California

Vallejo Federal Building
823 Marin Ave.
Vallejo Co: Solano CA
Landholding Agency: GSA
Property Number: 549740014
Status: Excess
Comment: 15,134 sq. ft., most recent use—office, possible asbestos/lead paint, historic significance
GSA Number: 9–G–CA–1502

Hawaii

Bldg. T–105
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219740282
Status: Unutilized
Comment: 13,600 sq. ft., needs rehab, most recent use—offices, off-site use only

Bldg. S–305
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219740283
Status: Unutilized
Comment: 3883 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldg. S–307
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219740284
Status: Unutilized
Comment: 2852 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldgs. T–306, T–308, T–312
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219740285
Status: Unutilized
Comment: 400 sq. ft., needs rehab, most recent use—garages, off-site use only

10 Bldgs.
Fort Shafter
P–604 thru P–613
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219740286
Status: Unutilized
Comment: 4992 sq. ft., needs rehab, most recent use—housing, off-site use only

11 Bldgs.
Fort Shafter
P–614 thru P–624
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219740287
Status: Unutilized
Comment: 4992 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldg. P–631
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219740288
Status: Unutilized
Comment: 5028 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldg. P–633
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219740289
Status: Unutilized
Comment: 4554 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldg. P–635
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219740290
Status: Unutilized
Comment: 6828 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldg. 691
Pearl City Peninsula, Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779810002
Status: Excess
Comment: 48,581 sq. ft., most recent use—warehouse, possible asbestos/lead paint, off-site use only

Bldg. 695
Pearl City Peninsula, Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779810003
Status: Excess
Comment: 92,897 sq. ft., most recent use—warehouse, possible asbestos/lead paint, off-site use only

Bldg. 696
Pearl City Peninsula, Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779810004
Status: Excess

Comment: 67,137sq. ft., most recent use—warehouse, possible asbestos/lead paint, off-site use only

Bldg. 697
Pearl City Peninsula, Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779810005
Status: Excess
Comment: 72,289 sq. ft., most recent use—warehouse, possible asbestos/lead paint, off-site use only

Bldg. 698
Pearl City Peninsula, Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779810006
Status: Excess
Comment: 41,377 sq. ft., most recent use—warehouse, possible asbestos/lead paint, off-site use only

Kansas

Bldg. P–355
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 21974091
Status: Unutilized
Comment: 3523 sq. ft., most recent use—pole barn, off-site use only

Bldg. P–356
Fort Leavenworth
Landholding Agency: Army
Property Number: 219740292
Status: Unutilized
Comment: 2898 sq. ft., most recent use—quonset barn, off-site use only

Bldg. P–358
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219740293
Status: Unutilized
Comment: 1960 sq. ft., presence of lead based paint, most recent use—barn, off-site use only

Bldg. P–389
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219740294
Status: Unutilized
Comment: 576 sq. ft., presence of lead based paint, most recent use—storage, off-site use only

Bldg. P–390
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219740295
Status: Unutilized
Comment: 4713 sq. ft., presence of lead based paint, most recent use—swine house, off-site use only

Bldg. P–411
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219740296
Status: Unutilized
Comment: 2898 sq. ft., most recent use—barn, off-site use only

Bldg. P–416
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219740297
Status: Unutilized
Comment: 2760 sq. ft., presence of lead based paint, most recent use—horse stable, off-site use only

Maryland

Bldg. 4039
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219740304
Status: Unutilized
Comment: 249 sq. ft., concrete block, presence of asbestos/lead paint, most recent use—storage

Bldg. 2446
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740305
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 2472
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740306
Status: Unutilized
Comment: 7670 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 2802
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740307
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—lab., off-site use only

Bldg. 3179
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740308
Status: Unutilized
Comment: 7670 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 4700
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740309
Status: Unutilized
Comment: 36,619 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 2805
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740351
Status: Unutilized
Comment: 2208 sq. ft., presence of asbestos/lead paint, most recent use—lab., off-site use only

Massachusetts

Bldgs. T–2011, 2012, 2014
Devens RFTA
Devens RFTA MA 01432–
Landholding Agency: Army
Property Number: 219740298
Status: Underutilized
Comment: 4890 sq. ft., need rehab, presence of asbestos/lead paint, most recent use—office

Bldg. T–2013
Devens RFTA
Devens RFTA MA 01432–
Landholding Agency: Army
Property Number: 219740299
Status: Unutilized
Comment: 9110 sq. ft., need rehab, presence of asbestos/lead paint, most recent use—office

Bldg. T–2015
Devens RFTA
Devens RFTA MA 01432–
Landholding Agency: Army
Property Number: 219740300
Status: Underutilized
Comment: 2497 sq. ft., need rehab, presence of asbestos/lead paint, most recent use—storage

Bldgs. T–2446, 2479
Devens RFTA
Devens RFTA MA 01432–
Landholding Agency: Army
Property Number: 219740301
Status: Underutilized
Comment: 3108 sq. ft., need rehab, presence of asbestos/lead paint, most recent use—storage

Bldg. T–3553
Devens RFTA
Devens RFTA MA 01432–
Landholding Agency: Army
Property Number: 219740302
Status: Underutilized
Comment: 1160 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage

Bldg. T–3555, 3568
Devens RFTA
Devens RFTA MA 01432–
Landholding Agency: Army
Property Number: 219740303
Status: Underutilized
Comment: 7277 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage

Michigan

S. Haven Keeper's Dwelling
91 Michigan Ave.
South Haven Co: Van Buren MI 49090–
Landholding Agency: GSA
Property Number: 549740012
Status: Excess
Comment: 3257 sq. ft., 2-story dwelling and 800 sq. ft. garage, presence of asbestos/lead paint
GSA Number: 1–U–MI–475C

Minnesota

Duluth Duplex Housing
725 & 725½ Lake Ave.
Duluth Co: St. Louis MN 55802–
Landholding Agency: GSA
Property Number: 549740013
Status: Excess
Comment: 2-story brick dwelling, possible lead paint

GSA Number: 1–U–MN–571

Nevada

5 Units, Tonopah Housing (902, 904, 920, 922, 927)
Air Force Road
Tonopah Co: Nye NV 89049–
Landholding Agency: GSA
Property Number: 549810002
Status: Excess
Comment: 1191–1382 sq. ft., most recent use—residential, fair condition, presence of asbestos, possible lead based paint
GSA Number 9–U–NV–467E

New Jersey

Bldg. 22
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740311
Status: Unutilized
Comment: 4220 sq. ft., needs rehab, most recent use—machine shop, off-site use only

Bldg. 178
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740312
Status: Unutilized
Comment: 2067 sq. ft., most recent use—research, off-site use only

Bldg. 213
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740313
Status: Unutilized
Comment: 915 sq. ft., most recent use—explosives research, off-site use only

Bldg. 642
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740314
Status: Unutilized
Comment: 280 sq. ft., most recent use—explosives testing, off-site use only

Bldg. 732
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740315
Status: Unutilized
Comment: 9077 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 975
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740316
Status: Unutilized
Comment: 1800 sq. ft., most recent use—admin., off-site use only

Bldg. 1222D
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740317
Status: Unutilized
Comment: 36 sq. ft., most recent use—storage, off-site use only

Bldg. 1604
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740321
Status: Unutilized
Comment: 8519 sq. ft., most recent use—loading facility, off-site use only

Bldg. 3117
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740322
Status: Unutilized
Comment: 100 sq. ft., most recent use—sentry station, off-site use only

Bldg. 3201
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740324
Status: Unutilized
Comment: 1360 sq. ft., most recent use—water treatment plant, off-site use only

Bldg. 3202
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740325
Status: Unutilized
Comment: 96 sq. ft., most recent use—snack bar, off-site use only

Bldg. 3219
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740326
Status: Unutilized
Comment: 288 sq. ft., most recent use—snack bar, off-site use only

New Mexico

4 units—Ravenna
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219740327
Status: Unutilized
Comment: 1126 sq. ft., needs rehab, presence of asbestos, most recent use—housing, off-site use only

17 units
White Sands Missile Range
Picatinny, Dart, Hawk, LaCrosse
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219740328
Status: Unutilized
Comment: 1207 sq. ft., needs rehab, presence of asbestos, most recent use—housing, off-site use only

2 units
White Sands Missile Range
Picatinny
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219740329
Status: Unutilized
Comment: 1264 sq. ft., needs rehab, presence of asbestos, most recent use—housing, off-site use only

30 units
White Sands Missile Range
Hawk, LaCrosse, Ravenna
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219740330
Status: Unutilized
Comment: 1426 sq. ft., needs rehab, presence of asbestos, most recent use—housing, off-site use only

5 units
White Sands Missile Range
Dart, Hawk
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219740331
Status: Unutilized
Comment: 2080 sq. ft., needs rehab, presence of asbestos, most recent use—housing, off-site use only

3 units
White Sands Missile Range
Dart, Hawk
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219740332
Status: Unutilized
Comment: 2220 sq. ft., needs rehab, presence of asbestos, most recent use—housing, off-site use only

North Carolina

Bldg. 1–3151
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219740310
Status: Excess
Comment: 481 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Ohio

Keeper's Dwelling & Shed
110 Wall Street
Huron OH 55802–
Landholding Agency: GSA
Property Number: 549740015
Status: Excess
Comment: 5100 sq. ft., single family residence and a 216 sq. ft. storage shed, possible lead based paint
GSA Number: 1–U–OH–800

Oklahoma

Bldg. P–901
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219740334
Status: Unutilized
Comment: 101 sq. ft., concrete, most recent use—storage, off-site use only

Pennsylvania

Bldg.T–3–52
Fort Indiantown Gap
Annville Co: Lebanon PA 17003–5000
Landholding Agency: Army
Property Number: 219740335
Status: Unutilized
Comment: 2290 sq. ft., most recent use—dining, off-site use only

Bldg. T–3–86
Fort Indiantown Gap
Annville Co: Lebanon PA 17003–5000
Landholding Agency: Army
Property Number: 219740336
Status: Unutilized
Comment: 4720 sq. ft., most recent use—barracks, off-site use only

Bldg. T–3–87
Fort Indiantown Gap
Annville Co: Lebanon PA 17003–5000

Landholding Agency: Army
Property Number: 219740337
Status: Unutilized
Comment: 1144 sq. ft., most recent use—classroom, off-site use only

Bldg. T–4–3
Fort Indiantown Gap
Annville Co: Lebanon PA 17003–5000
Landholding Agency: Army
Property Number: 219740338
Status: Unutilized
Comment: 1750 sq. ft., most recent use—admin., off-site use only

Texas

Bldg. 1020
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740339
Status: Unutilized
Comment: 1505 sq. ft., concrete block, most recent use—hdgts. bldg., off-site use only

Bldg. 2518
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740340
Status: Unutilized
Comment: 15,078 sq. ft., needs major rehab, presence of lead paint, most recent use—vehicle maint. shop, off-site use only

68 Bldgs. (4000 series)
Fort Bliss
Enlisted Unaccompanied Personnel Housing
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740341
Status: Unutilized
Comment: 4800 sq. ft. each, concrete block, most recent use—housing, off-site use only

Bldg. 4255
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740342
Status: Unutilized
Comment: 2880 sq. ft., concrete block, most recent use—dining facility, off-site use only

Bldg. 4258
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740343
Status: Unutilized
Comment: 750 sq. ft., metal shelter, most recent use—covered training area, off-site use only

Bldg. 4574
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740344
Status: Unutilized
Comment: 11,215 sq. ft., concrete block, most recent use—dining facility, off-site use only

Bldg. 4575
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740345
Status: Unutilized
Comment: 8904 sq. ft., metal shelter, most recent use—covered training area, off-site use only

Bldg. 4591
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740346
Status: Unutilized
Comment: 3094 sq. ft., concrete block, most recent use—hdqts. bldg., off-site use only

Bldg. 4674
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740347
Status: Unutilized
Comment: 11,217 sq. ft., concrete block, most recent use—dining facility, off-site use only

Bldgs. 4880–4882, 4884–4890
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740348
Status: Unutilized
Comment: various sq. ft., metal frame, most recent use—instruction bldg., off-site use only

Bldg. 4973
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740349
Status: Unutilized
Comment: 11,052 sq. ft., concrete block, most recent use—dining facility, off-site use only

Bldg.4974
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740350
Status: Unutilized
Comment: 3018 sq. ft., concrete block, most recent use—hdqts. bldg. off-site use only

Virginia

Bldg. 1520
Naval Amphibious Base Little Creek
Norfolk VA 23521–2616
Landholding Agency: Navy
Property Number: 779810007
Status: Excess
Comment: 984 sq. ft., most recent use—storage, off-site use only

Bldg. 2080
Naval Amphibious Base Little Creek
Norfolk VA 23521–2616
Landholding Agency: Navy
Property Number: 779810008
Status: Excess
Comment: 510 sq. ft., most recent use—storage, off-site use only

Bldg. 3319
Naval Amphibious Base Little Creek
Norfolk VA 23521–2616
Landholding Agency: Navy
Property Number: 779810009
Status: Excess
Comment: 9254 sq. ft., most recent use—maintenance, off-site use only

Bldg. 3551
Naval Amphibious Base Little Creek
Norfolk VA 23521–2616
Landholding Agency: Navy
Property Number: 779810010
Status: Excess
Comment: 384 sq. ft., most recent use—bus waiting station, off-site use only

Washington

Vancouver Info Center
Interstate Rt 5
Vancouvr Co: Clark WA 98663–
Landholding Agency: GSA
Property Number: 549740011
Status: Excess
Comment: 1200 sq. ft., most recent use—visitor info center, excellent condition.
GSA Number: 9–GR–WA–514E

**Suitable/Unavailable Properties**

*Buildings (by State)*

New York

McGrath USAR Center
Robinson Road
Village of Massena Co: St. Lawrence NY 13662–2497
Landholding Agency: Army
Property Number: 219740333
Status: Unutilized
Comment: 12,930 sq. ft. reserve center and 1325 sq. ft. motor repair shop

*Land (by State)*

Arizona

0.23 acre
Ron Burke II/West of 124th Street
Scottsdale Co: Maricopa AZ 85259–
Landholding Agency: Interior
Property Number: 619740001
Status: Excess
Comment: narrow strip

**Unsuitable Properties**

*Buildings (by State)*

California

Bldg. 89, Naval Station
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 779810001
Status: Excess
Reason: Other
Comment: unsound

Maine

Aircraft Hangar #2
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 779810015
Status: Excess
Reason: Extensive deterioration

Massachusetts

Cook House
North Great Road
Lincoln Co: Middlesex, MA 01773–
Landholding Agency: Interior
Property Number: 619810001
Status: Excess
Reason: Extensive deterioration

Giurleo House
North Great Road
Lincoln Co: Middlesex MA 01773–
Landholding Agency: Interior
Property Number: 619810002
Status: Excess
Reason: Extensive deterioration.

Nevada

Former Weather Service Office
Winnemucca Airport
Winnemucca Co: Humbolt NV 89445–
Landholding Agency: GSA
Propoerty Number: 549810001
Status: Excess
Reason: Within airport runway clear zone
GSA Number: 9–C–NV–509

Oregon

Portion, Former Kingsley Field
Air Force Base
Arnold Ave. & Joe Wright Rd.
Klamath Falls Co: Klamath OR 97603–
Landholding Agency: GSA
Property Number: 549810003
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 10–D–OR–434–J

Washington

Bldg. 604, Pier 91
Naval Station Everett
Seattle Co: King WA
Landholding Agency: Navy
Property Number: 779810011
Status: Excess
Reason: Extensive deterioration

Bldg. 1008
Naval Submarine Base, Bangor
Silverdale Co: Kitsap WA 98315–1199
Landholding Agency: Navy
Property Number: 779810012
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1010
Naval Submarine Base, Bangor
Silverdale Co: Kitsap WA 98315–1199
Landholding Agency: Navy
Property Number: 779810013
Status: Unutilized
Reason: Extensive deterioration

Bldg. 6460
Naval Submarine Base, Bangor
Silverdale Co: Kitsap WA 98315–1199
Landholding Agency: Navy
Property Number: 779810014
Status: Unutilized
Reason: Extensive deterioration

*Land (by State)*

Washington

Tract No. 092902
Pasco Co: Franklin WA 99301–
Landholding Agency: Interior
Property Number: 619740008
Status: Excess
Reason: Within airport runway clear zone

Tract No. 092912
Pasco Co: Franklin WA 99301–
Landholding Agency: Interior
Property Number: 619740009
Status: Excess
Reason: Within airport runway clear zone

Tract No. 0923022
Co: Franklin WA 99301–
Landholding Agency: Interior
Property Number: 619740010
Status: Excess
Reason: Other
Comment: no public access

Tract No. 103026
Co: Franklin WA 99301–
Landholding Agency: Interior
Property Number: 619740011
Status: Excess
Reason: Other
Comment: no public access

Tract No. 103032
Co: Franklin WA 99301–
Landholding Agency: Interior
Property Number: 619740012
Status: Excess
Reason: Other
Comment: no public access

Tract No. 132816
Co: Franklin WA 99330–
Landholding Agency: Interior
Property Number: 619740013
Status: Excess
Reason: Other
Comment: no public access

Tract No. 132929
Co: Franklin WA 99330–
Landholding Agency: Interior
Property Number: 619740014
Status: Excess
Reason: Other
Comment: no public access

Tract No. 142517
Co: Franklin WA 99349–
Landholding Agency: Interior
Property Number: 619740015
Status: Excess
Reason: Other
Comment: no public access

Tract No. 172314
Co: Grant WA 98950–
Landholding Agency: Interior
Property Number: 619740016
Status: Excess
Reason: Other
Comment: No public access

Tract No. 172433
Co: Grant WA 99321–
Landholding Agency: Interior
Property Number: 619740017
Status: Excess
Reason: Other
Comment: No public access

Tract No. 172833
Co: Grant WA 99357–
Landholding Agency: Interior
Property Number: 619740018
Status: Excess
Reason: Other
Comment: No public access

Tract No. 182620
Co: Grant WA 98824–
Landholding Agency: Interior
Property Number: 619740019
Status: Excess
Reason: Other
Comment: No public access

Tract No. 192328
Co: Grant WA 98848–
Landholding Agency: Interior
Property Number: 619740020
Status: Excess
Reason: Other
Comment: No public access

Tract No. 192332
Co: Grant WA 98848–
Landholding Agency: Interior
Property Number: 619740021
Status: Excess
Reason: Other
Comment: No public access

Tract No. 192520
Co: Grant WA 98837–
Landholding Agency: Interior
Property Number: 619740022
Status: Excess
Reason: Other
Comment: No public access

Tract No. 192524
Co: Grant WA 98837–
Landholding Agency: Interior
Property Number: 619740023
Status: Excess
Reason: Other
Comment: No public access

Tract No. 192620b
Co: Grant WA 98837–
Landholding Agency: Interior
Property Number: 619740024
Status: Excess
Reason: Other
Comment: No public access

Tract No. 192909
Co: Grant WA 98837–
Landholding Agency: Interior
Property Number: 619740025
Status: Excess
Reason: Other
Comment: No public access

Tract No. 202436
Co: Grant WA 98848–
Landholding Agency: Interior
Property Number: 619740026
Status: Excess
Reason: Other
Comment: No public access

Tract No. 202529b
Co: Grant WA 98823–
Landholding Agency: Interior
Property Number: 619740027
Status: Excess
Reason: Other
Comment: No public access

Tract No. 202530
Co: Grant WA 98823–
Landholding Agency: Interior
Property Number: 619740028
Status: Excess
Reason: Other
Comment: No public access

Tract No. 202635
Co: Grant WA 98823–
Landholding Agency: Interior
Property Number: 619740029
Status: Excess
Reason: Other
Comment: No public access

Tract No. 212808
Co: Grant WA 98837–
Landholding Agency: Interior
Property Number: 619740030
Status: Excess
Reason: Other
Comment: No public access

[FR Doc. 98–824 Filed 1–15–98; 8:45 am]

BILLING CODE 4210–29–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### Notice of Meeting

**SUMMARY:** The Lower Snake River District Resource Advisory Council will meet in Boise to discuss management of redband trout and sage grouse in southwest Idaho, as well as implementation of new grazing management plans in the Bruneau and Owyhee Resource Areas.

**DATES:** February 26, 1997. The meeting will begin at 9:00 a.m. Public comment periods will be held beginning at 9:30 a.m. And 3:00 p.m.

**ADDRESS:** The Lower Snake River District Office is located at 3948 Development Avenue, Boise, Idaho.

**FOR FURTHER INFORMATION CONTACT:** Barry Rose, Lower Snake River District Office (208–384–3393).

Dated: January 9, 1998.

**Howard Hedrick,**

*Resource Coordinator.*

[FR Doc. 98–1088 Filed 1–15–98; 8:45 am]

BILLING CODE 4310–GG–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–050–1020–00: GP8–0076]**

### Notice of Meeting of John Day-Snake Resource Advisory Council

**AGENCY:** Bureau of Land Management, Prineville District, Interior.

**ACTION:** Meeting of John Day-Snake Resource Advisory Council: Pendleton, Oregon; February 19 & 20, 1998.

**SUMMARY:** A meeting of the John Day-Snake Resource Advisory Council will be held on February 19, 1998 from 1:00 p.m. to 5:00 p.m. and on February 20 from 8:00 a.m. to noon at the Doubletree Inn, 304 SE Nye Ave., Pendleton, Oregon. The meeting is open to the public. Public comments will be received at 3:00 p.m. on February 19. Topics to be discussed by the Council will include the Interior Columbia Basin Ecosystem Management Project, implementation of Standards for Rangeland Health and Guidelines for Livestock Grazing on public lands, an update on the Oregon Governor's Forest Health Advisory Committee and a discussion of operating agreements for future Council meetings. There will be a satellite video conference with the Secretary of the Interior and BLM Director on February 20.

**FOR FURTHER INFORMATION CONTACT:** James L. Hancock, Bureau of Land Management, Prineville District Office, 3050 NE Third Street, P.O. Box 550, Prineville, Oregon 97754, or call 541–416–6700.

Dated: January 7, 1998.

**James L. Hancock,**

*District Manager.*

[FR Doc. 98–1123 Filed 1–15–98; 8:45 am]

BILLING CODE 4310–33–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ID–990–1020–00]**

### Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Upper Columbia—Salmon Clearwater Districts, Idaho.

**ACTION:** Notice of Resource Advisory Council meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, the Bureau of Land Management (BLM) announces the meeting of the Upper Columbia—Salmon Clearwater Districts Resource Advisory Council (RAC) on Friday, February 20, 1998, in Coeur d'Alene, Idaho.

Agenda items include: a video conference featuring Secretary of the Interior Bruce Babbitt and BLM Director Pat Shea, reports from the weeds and recreation subgroups, discussion of future issues to consider, and other Council business. The meeting will begin at 8:00 a.m. (PST) and be held at the BLM Coeur d'Alene Field Office, 1808 North Third Street, Coeur d'Alene, Idaho. The public may address the Council during the public comment period from 2:00 p.m.–2:30 p.m.

**SUPPLEMENTARY INFORMATION:** All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

The Council's responsibilities include providing long-range planning and establishing resource management priorities.

**FOR FURTHER INFORMATION CONTACT:** Ted Graff (208) 769–5004.

Dated: January 8, 1998.

**Fritz U. Rennebaum,**

*District Manager.*

[FR Doc. 98–1148 Filed 1–15–98; 8:45 am]

BILLING CODE 4130–GG–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR 53130; OR–080–08–7122–00–8977; G8–0077]**

### Realty Action; Proposed Noncompetitive Lease

The following described parcel of public land is being considered for a noncompetitive lease under the authority of Section 302 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1732), at not less than the appraised fair market value:

**Williamette Meridian, Oregon**

T. 5 S., R. 4 E.,
Sec. 19, a portion of the SW¼NE¼

The above-described parcel contains approximately 40 acres in Clackamas County. The external boundary of the area will be surveyed and a metes and bounds description used for the lease.

The purpose of the lease would be to accommodate a proposed shooting range with three firing lanes and appurtenant facilities. Since there is no known interest to develop the shooting range by anyone else, the land would be offered for lease without competition.

The above-described parcel is being considered for lease to the Molalla Rifle Club, an Oregon non-profit corporation. The lease would be issued for a term of 10 years, with a right to renewal the lease for additional years.

Detailed information concerning this proposal, including the environmental assessment, is available for review at the Salem District Office, 1717 Fabry Road SE, Salem, Oregon 97306.

For a period of 45 days from the date of this notice, interested parties may submit comments regarding the proposed exchange to the Cascades Area Manager at the above address. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this decision.

**Richard C. Prather,**

*Cascades Area Manager.*

[FR Doc. 98–1146 Filed 1–15–98; 8:45 am]

BILLING CODE 4310–33–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–050–1110–00:G8–0070]**

### Prineville District; Shooting Restriction on Public Lands; Oregon

January 6, 1998.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice is hereby given that the area legally described below is seasonally closed to shooting.

**LEGAL DESCRIPTION:** This closure order applies to all areas within Township 15 South, Range 11 East, Section 16, SE of the SW and SW of the SE; and Section 21, NE of the NW and NW of the NE.

Effective immediately, all areas as described above are closed to shooting between January 1 and August 31, annually. Shooting is defined as ''the discharge of firearms''. A firearm is defined as ''a weapon, by whatever name know, which is designed to expel a projectile by the action of powder and which is readily capable of use as a weapon''. The purpose of this closure is to protect wildlife resources. More specifically, this closure is ordered to protect a nesting pair of golden eagles. Currently, the occurrence of shooting at this site jeopardizes the persistence and nesting success of the golden eagles at this location. Exemptions to this closure order may be made on a case-by-case basis by the authorized officer. This emergency order will be evaluated in the Urban Interface Amendment to the Brothers/La Pine Resource Management Plan of 1989. The authority for this closure is 43 CFR 8364.1: Closure and restriction orders.

**FOR FURTHER INFORMATION CONTACT:** Sarah Nichols, Wildlife Biologist, BLM Prineville District Office, P.O. Box 550, Prineville, Oregon 97754, telephone (541) 416–6725

**SUPPLEMENTARY INFORMATION:** Violation of this closure order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR 8360.0–7.

Dated: January 6, 1998.

**James G. Kenna,**

*Deschutes Resource Area Manager, Prineville District Office.*

[FR Doc. 98–1127 Filed 1–15–98; 8:45 am]

**BILLING CODE 4310–33–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–933–4310–00; GP8–0073]**

### Salem, Eugene, Roseburg, Medford and Coos Bay Districts and Klamath Falls Resource Area, Oregon; Intent to Initiate Third Year Evaluations of Approved Resource Management Plans

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent to collect and analyze data as part of third year evaluations for the Salem, Eugene, Roseburg, Medford, Coos Bay, Klamath Falls and Upper Klamath Basin Resource Management Plans and invitation for the public to participate.

**SUMMARY:** The Bureau of Land Management (BLM) Salem, Eugene, Roseburg, Medford, and Coos Bay Districts and Klamath Falls Resource Area (in the Lakeview District) are initiating the collection of the supplemental information and analyses required for simultaneous Resource Management Plan (RMP) evaluations. All of the comprehensive land use plans were completed and approved in 1995 and included a commitment to evaluations based on three full years of implementation. The seven plans guide and control management actions on over 2,560,000 acres of BLM surface ownership throughout western Oregon. The public is invited to review the available annual District program summary reports and quarterly project update reports, as well as the approved plans and their plan monitoring and evaluation appendices. The public may contribute by identifying new sources of information or analyses which may have a bearing on the continued validity of the individual or collective plans. The evaluations will be based on the implementation actions and plan and project monitoring from the dates of approval through September 30, 1998. BLM staff have already taken actions to determine if there has been any significant change in the related plans of other federal agencies, state or local governments, or Indian tribes, or whether there is other new data of significance to the plan.

**EFFECTIVE DATE:** There is no specific legal or regulatory requirement for public notification or participation in BLM plan evaluations. This notice, together with similar notices to electronic and print media in the local areas, initiates a 60-day comment period ending March 17, 1998. During this time period, local BLM staff will be scheduling open houses or other forums where members of the public may visit field offices and talk directly with key staff about the annual reports, quarterly updates, and RMP monitoring and evaluation schedule. The actual evaluations will be conducted during fiscal year 1999 (October 1998 through September 1999) by BLM staff from the Oregon State Office. Any supplemental analyses on regional, provincial, watershed or other level issues will be made available for public review as they are completed and approved. For example, analyses are expected on cumulative economic and employment effects and changes in regional conditions which may be attributed to Bureau natural resource product sales and ecosystem recovery actions, such as stream restoration and road closure projects. All of the supplemental analyses and RMP evaluations are expected to be completed by the summer of 1999, when they will be available for public review, prior to State Director approval. The State Director's findings will indicate whether or not the plans are individually or collectively still valid for continued management direction or require plan amendments or revisions, together with the appropriate environmental analyses and public participation.

**FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS, CONTACT ANY OF THE FOLLOWING:**

*Salem District:* Mark Lawrence, Assoc. District Manager, Bureau of Land Management, 1717 Fabry Road, SE, Salem, OR 97306, (503) 375–5646

*Eugene District:* Denis Williamson, District Manager, Bureau of Land Management, 2890 Chad Drive, P.O. Box 10226, Eugene, OR 97440, (541) 683–6600

*Roseburg District:* Cary Osterhaus, District Manager, Bureau of Land Management, 777 NW Garden Valley Blvd., Roseburg, OR 97470, (541) 440–4930

*Medford District:* Van Manning, Acting District Manager, Bureau of Land Management, 3040 Biddle Road, Medford, OR 97504, (541) 770–2200

*Coos Bay District:* Neil Middlebrook, Acting Assoc. District Manager, Bureau of Land Management, 1300 Airport Lane, North Bend, OR 97459, (541) 756–0100

*Klamath Falls Resource Area:* Barron Bail, Area Manager, 2795 Anderson Avenue, Bldg. 25, Klamath Falls, OR 97603, (541) 883–6916

*Oregon State Office:* William Bradley, Deputy State Director for Resource Planning, Use, and Protection, Bureau of Land Management, 1515 SW 5th

Avenue, P.O. Box 2965, Portland, OR 97208, (503) 952–6056

**SUPPLEMENTARY INFORMATION:** The Bureau's procedures for Monitoring and Evaluation are found at 43 Code of Federal Regulations 1610.4–9. Each District has distributed annual District program summaries to report plan monitoring by fiscal year and quarterly updates for the applicable approved RMPs to their lists of known interested addressees. There is no fixed public review or comment period for the annual and quarterly reports, and comments or questions may be raised to the applicable office staff at any time. Interested persons may request copies of past reports and to be added to the applicable mailing lists by contacting the applicable District offices. Each District has a limited number of the approved RMPs and the supporting Environmental Impact Statement document(s) available upon request. Each plan contains an appendix for plan monitoring evaluation, which includes up to 20 pages of specific monitoring questions which will form the basis for the specific RMP evaluations. Portions of the documents listed above may be available in an electronic format and some may be available on Bureau electronic Internet ''web sites.'' Interested individuals should contact the individual District offices to determine availability of planning documents and reports in local libraries or in electronic formats. Single copies of all of the plans and annual reports are also available for inspection during normal working hours in the Oregon State Office (7th floor Lands Office) at the address listed above.

Dated: January 5, 1998.

**Elaine Y. Zielinski,**

*State Director, Oregon/Washington.*

[FR Doc. 98–1147 Filed 1–15–98; 8:45 am]

BILLING CODE 4310–33–P

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[MT–926–08–1420–00]**

## Montana: Filing of Plat of Survey

**AGENCY:** Bureau of Land Management, Montana State Office, Interior.

**ACTION:** Notice.

**SUMMARY:** The plat of survey of the following described land is scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

**Meridian, South Dakota**

T. 6 S., R. 9 E.

The plat, representing the dependent resurvey of portions of the north boundary and subdivisional lines, and the adjusted original meanders of the left bank of the South Fork of the Cheyenne River in section 4, and the subdivision of section 4, and the survey of the new meanders of a portion of the present left bank of the South Fork of the Cheyenne River in section 4, Township 6 South, Range 9 East, Black Hills Meridian, South Dakota, was accepted December 18, 1997.

This survey was executed at the request of the U.S. Forest Service, Custer National Forest, and was necessary to identify lands administered by the U.S. Forest Service.

A copy of the preceding described plat will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against this survey, as shown on this plat, is received prior to the date of the official filing, the filing will be stayed pending consideration of the protest. This particular plat will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: January 8, 1998.

**Daniel T. Mates,**

*Chief Cadastral Surveyor, Division of Resources.*

[FR Doc. 98–1128 Filed 1–15–98; 8:45 am]

BILLING CODE 4310–33–P

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[NV–942–08–1420–00]**

## Filing of Plats of Survey; Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

**EFFECTIVE DATES:** Filing is effective at 10:00 a.m. on the dates indicated below.

**FOR FURTHER INFORMATION CONTACT:** Robert H. Thompson, Acting Chief, Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702–785–6541.

**SUPPLEMENTARY INFORMATION:**

1. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on December 11, 1997:

The plat, representing the dependent resurvey of a portion of the east boundary and a portion of the subdivision-of-section lines of section 24, and a metes-and-bounds survey in section 24, Township 19 South, Range 60 East, of the Mount Diablo Meridian, in the State of Nevada, under Group No. 769, was accepted December 9, 1997.

This survey was executed to meet certain needs of the Bureau of Land Management.

2. The Plat of Survey of the following described lands will be officially filed at the Nevada State Office, Reno, Nevada on February 24, 1998:

The plat, representing the dependent resurvey of the Third Standard Parallel North, through a portion of Range 22 East, a portion of the west boundary and a portion of the subdivisional lines, and the survey of a portion of the subdivisional lines, and the subdivision of section 30, Township 16 North, Range 22 East, of the Mount Diablo Meridian, in the State of Nevada, under Group No. 761, was accepted January 6, 1998.

This survey was executed to meet certain needs of the Bureau of Land Management and John Lawrence (Nevada), Inc.

3. Subject to valid existing rights the provisions of existing withdrawals and classifications, the requirements of applicable laws, and other segregation of record, those lands listed under item 2 are open to application, petition, and disposal, including application under the mineral leasing laws. All such valid applications received on or prior to February 24, 1998, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

4. The above-listed surveys are now the basic records for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: January 6, 1998.

**Robert H. Thompson,**

*Acting Chief Cadastral Surveyor, Nevada.*

[FR Doc. 98–1087 Filed 1–15–98; 8:45 am]

BILLING CODE 4310–HC–P

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 731–TA–776–779 (Preliminary)]**

## Certain Preserved Mushrooms From Chile, China, India, and Indonesia

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of antidumping investigations and scheduling of preliminary phase investigations.

**SUMMARY:** The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731–TA–776–779 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Chile, China, India, and Indonesia of certain preserved mushrooms,[1] provided for in subheadings 0711.90.40 and 2003.10.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by February 20, 1998. The Commission's views are due at the Department of Commerce within five business days thereafter, or by February 27, 1998.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207), as amended in 61 FR 37818 (July 22, 1996).

**EFFECTIVE DATE:** January 6, 1998.

**FOR FURTHER INFORMATION CONTACT:** Olympia DeRosa Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

**SUPPLEMENTARY INFORMATION:**

*Background.*—These investigations are being instituted in response to a petition filed on January 6, 1998, by L.K. Bowman, Inc., Nottingham, PA; Modern Mushroom Farms, Inc., Avondale, PA; Monterrey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp., Temple, PA; Mushroom Canning Co., Kennett Square, PA; Sunny Dell Foods, Inc., Oxford, PA; and United Canning Corp., North Lima, OH.

*Participation in the investigations and public service list.*—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Conference.*—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on January 27, 1998, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Olympia DeRosa Hand (202–205–3182) not later than January 23, 1998, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

*Written submissions.*—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before January 30, 1998, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

[1] The imported products subject to these investigations consist of certain preserved mushrooms, whether imported whole, sliced, or as stems and pieces. The preserved mushrooms covered under the investigations are of the species *Agaricus bisporus and Agaricus bitorquis*. ''Preserved mushrooms'' refers to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers, including but not limited to cans or glass jars, in a suitable liquid medium that may include, but is not limited to, water, brine, or butter (or butter sauce). Preserved mushrooms may be imported whole, sliced, or as stems and pieces. Included within the scope of the petition are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of the petition are: (1) all other species of mushroom, including straw mushrooms (HTS statistical reporting number 2003.10.0009); (2) all fresh and chilled mushrooms (HTS subheading 0709.51.00), including ''refrigerated'' or ''quick blanched'' mushrooms; (3) dried mushrooms (HTS subheadings 0712.30.10 and 0712.30.20); (4) frozen mushrooms (HTS subheading 0710.80.20); and (5) ''marinated,'' ''acidified,'' or ''pickled'' mushrooms, which are packed with solutions such as oil, vinegar, or acetic acid (HTS subheading 2001.90.39).

Issued: January 12, 1998.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 98–1095 Filed 1–15–98; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

In accordance with Departmental policy, 28 CFR 50.7, and with Section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that a consent decree in *United States* v. *American Cyanamid Company, Inc., et al.,* Civ. A. No. L–98–27, was lodged on January 7, 1998, with the United States District Court for the District of Maryland. The consent decree resolves the claims of the United States under Sections 106(a), 107(a), and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), for reimbursement of response costs incurred at the Bush Valley Landfill Superfund Site located in Harford County, Maryland and for declaratory judgment as to liability that will be binding in actions to recover further response costs related to the Site. The consent decree obligates American Cyanamid Company, Inc. (formerly known as Cytec Industries, Inc.), Bata Shoe Company, Inc., Browning-Ferris, Inc. (formerly known as Eastern Disposal, Inc.), Case-Mason Filling, Inc., Cello Corporation, the city of Aberdeen, Maryland, the City of Havre de Grace, Maryland, Constar Plastics, Inc., Covance Preclinical Corporation (formerly known as Corning Life Sciences), Harford County, Maryland, Harford Sanitation Services, Inc., Alco Industries, Inc., Maryland State Highway Administration, and McCorquodale Process, Inc. to perform the remedial design and remedial action the U.S. Environmental Protection Agency has selected for the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice,Washington, D.C., 20530, and should refer to *United States* v. *American Cyanamid Company, Inc., et al.,* DOJ Ref. #90–11–2–1162.

The consent decree may be examined at the office of the United States Attorney, 6625 U.S. Courthouse, 101 W. Lombard Street, Baltimore, Maryland 21201; the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA; and at the Consent Decree Library, 1120 G Street, NW 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the consent decree may be obtained in person or by mail from the Consent Decree Library 1120 G Street, NW, 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $33.75 (25 cents per page reproduction cost), payable to the Consent Decree library. Attachments to the consent decree can be obtained for an additional $32.25.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section Environment and Natural Resources Division.*

[FR Doc. 98–1092 Filed 1–15–98; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq., in United States v. Curtiss-Wright Corp., et al.

In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), as amended, 42 U.S.C. 122(i), and Department policy, 28 CFR 50.7 38 FR 19029, notice is hereby given that a proposed Consent Decree in *United States* v. *Curtiss-Wright Corp., et al.,* Civil Action No. 98–CV–0014, was lodged in the United States District Court for the Northern District of New York on January 5, 1998. The proposed consent decree, if entered, will resolve the liability of eleven defendants, owners and/or operators, under Section 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), in connection with alleged releases of hazardous substances at the Malta Rocket Fuel Area (''Site''), a 165-acre parcel located on Plains Road in the Towns of Malta and Stillwater, Saratoga County, New York, New York. Under the settlement reflected in the proposed consent decree, defendants will perform certain remedial design/remedial action work at the Site implementing the Record of Decision issued July 18, 1996 and pay response costs of up to $956,581.77 to the United States.

The Department of Justice will receive, for a period of thirty (30 days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to Lois J. Schiffer, Assistant Attorney General of the Environment and Natural Resources Division, United States Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Curtiss-Wright Corp., et al.,* Department of Justice No. 90–11–3–1575.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Northern District of New York, U.S. Courthouse, Room 231, 445 Broadway, Albany, New York 12207; at Region I office of the United States Environmental Protection Agency, 290 Broadway, New York, New York 10007; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, at the above address. In requesting a copy, please enclose a check in the amount of $31.25 (25 cents per page reproduction costs) payable to Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 98–1094 Filed 1–15–98; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Clean Air Act and the Resource Conservation and Recovery Act

In accordance with 28 CFR 50.7, the Department of Justice gives notice that a proposed consent decree in *United States* v. *Marathon Oil Company,* Civil No. 96–4117–JLF (S.D. Ill.), was lodged with the United States District Court for the Southern District of Illinois on January 5, 1998. The proposed consent decree would resolve the United States' civil claims against the Marathon Oil Company for certain of its operations at its refinery in Robinson, Crawford County, Illinois, under the Clean Air Act, 42 U.S.C. §§ 7401–7671q, and the Resource Conservation and Recovery Act, 42 U.S.C. 6901–6992k. Under the terms of the proposed consent decree, defendant Marathon Oil Company will pay a civil penalty of $75,000 and perform a supplemental environmental project, which will include the implementation of an early-compliance program with projected Clean Air Act regulations for which Marathon Oil

Company will expend not less than $382,000 net after-tax.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resource Division, United States Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Marathon Oil Company*, Civil No. 96–4117–JLF (S.D. Ill.) and DOJ Reference No. 90–5–2–1–1978.

The proposed consent decree may be examined at: (1) the Office of the United States Attorney for the Southern District of Illinois, 9 Executive Drive, Suite 300, Fairview Heights, Illinois 62208, 618–628–3700; (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Mary T. McAuliffe (312–886–6237); and (3) the U.S. Department of Justice, Environment and Natural Resources Division Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $9.00 (36 pages at 25 cents per page reproduction costs), made payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 98–1093 Filed 1–15–98; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

**[AAG/A Order No. 147–98]**

### Privacy Act of 1974; Removal of a System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice, is removing Subsystem K., entitled ''Microfilmed Manifest Records,'' from its ''Immigration and Naturalization Service Index System, Justice/INS–001.'' (Justice/INS–001 was most recently published on October 5, 1993 (58 FR 51847).

The removal of Subsystem K. is part of a long-term review initiative of the INS–001 system of records—which includes a number of subsystems—in an effort to improve the reporting accuracy thereof. During this ongoing review, INS found that the information identified in Subsystem K. was misidentified initially as Privacy Act records, and thus was erroneously reported as part of the INS–001 system. Information in the Subsystem is not retrieved by personal identifier; rather, the information consists of a manifest from which information is retrieved by date of entry, port of entry, ships name, and/or aircraft identification code.

In addition, not all of these records remain in the custody of INS. Records dated up through December 1982 have been accepted by the National Archives and Records Administration (NARA) for permanent retention; only those records dated January 1983 to the present have been retained by INS.

Accordingly, requests for access to these records should be made under the Freedom of Information Act (FOIA) and addressed as follows:

For records dated up through December 1982, address any access requests to the NARA, Attention FOIA Officer, Seventh Street and Pennsylvania Avenue, NW., Washington, DC 20408. For records dated January 1983 to the present, address any access requests to the FOIA/Privacy Act Officer at the INS Nebraska Service Center, 850 S. Street, Lincoln, NE 68508.

Dated: January 5, 1998.

**Stephen R. Colgate,**

*Assistant Attorney General for Administration.*

[FR Doc. 98–1091 Filed 1–15–98; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

**[INS No. 1904–98]**

### Correction Concerning the Second Meeting of the New York District Advisory Council on Immigration Matters

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice of correction.

**SUMMARY:** On January 8, 1998, the Immigration and Naturalization Service (Service), published a notice in the **Federal Register** at 63 FR 1125. That notice announced that the District Advisory Council on Immigration Matters (DACOIM) meeting scheduled for January 22, 1998, would be held at 10:00 A.M. The purpose of this notice is to correct the time of the meeting.

**DATES AND TIMES:** The correct time of the meeting will be 1:00 P.M. on January 22, 1998.

**ADDRESSES:** The address of the meeting has not changed. It will still be held at 201 Varick Street, New York, New York 10278, 11th Floor, Room 1107–A.

**FOR FURTHER INFORMATION CONTACT:** Susan Young, Designated Federal Officer, Immigration and Naturalization Service, 26 Federal Plaza, Room 14–100, New York, New York 10278, telephone: (212) 264–0736.

Dated: January 13, 1998.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 98–1207 Filed 1–14–98; 1:03 pm]

BILLING CODE 4410–10–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

January 12, 1998.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen, ({202} 219–5096 ext. 143) or by E-Mail to Owen-Todd@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday—Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days form the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate 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;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Bureau of Labor Statistics.

*Title:* Labor Market Information (LMI) Cooperative Agreement.

*OMB Number:* 1220–0079 (reinstatement with change).

*Affected Public:* State, Local or Tribal.

| Collection forms | Number of respondents | Frequency | Total annual responses | Average time per response | Total hours |
|---|---|---|---|---|---|
| Works statements | 55 | 1 | 55 | 1–2 Hours | 55–110. |
| Budget Information Form (BIF) (LMI 1A, 1B) | 55 | 1 | 55 | 1–6 Hours | 55–330. |
| Quarterly Automated Financial Reports | 48 | 4 | 192 | 10–50 Minutes | 32–160. |
| Monthly Automated Status Reports | 48 | *8 | 384 | 5–25 Minutes | 32–160. |
| BLS Cooperative Statistics Financial Report (LMI 2A) | 7 | 12 | 84 | 1–5 Hours | 84–420. |
| Quarterly Status Report | 1–30 | 4 | 4–120 | 1 Hour | 4–120. |
| Total Ranges | 1–55 | | 774–890 | | 262–1300. |
| Totals (Average) | | | 832 | 56.3 Minutes | 781. |

*Reports are not received for end-of-quarter month, i.e. December, March, June and September.

*Total Annualized capital/startup costs:* $0.

*Total Annual cost (operating/maintaining systems or purchasing services):* $0.

*Description:* The Bureau of Labor Statistics awards funds to State Employment Security Agencies (SESAs) in the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa each year to assist them in operating one or more of five LMI cooperative statistical programs: Current Employment Statistics, Local Area Unemployment Statistics, Occupation Employment Statistics, Covered Employment and Wages Report, and Mass Layoff Statistics. The LMI Cooperative Agreement includes all information needed by the SESAs to apply for these funds and once awarded, report on the status of obligation and expenditure of these funds, as well as close out the cooperative agreement.

*Agency:* Employment Standards Administration.

*Title:* Request for Employment Information (CA–1027).

*OMB Number:* 1215–0105.

*Frequency:* On Occasion.

*Affected Public:* Business or other for-profit.

*Number of Respondents:* 1,000.

*Estimated Time Per Respondent:* 15 minutes.

*Total Burden Hours:* 250 hours.

*Total Annualized capital/startup costs:* 0.

*Total annual costs (operating/maintaining systems or purchasing services):* $320.

*Description:* Payment of Compensation for partial disability to injured Federal employees is required under 5 U.S.C. 8106. This section also requires the Office of Workers' Compensation to obtain information regarding a claimant's earnings during a period of eligibility to compensation. The CA–1027 is used to obtain earnings information for an individual employed by a private employer and is used as criteria for determining the claimant's entitlement to compensation benefits.

*Agency:* Employment Standards Administration.

*Title:* Notice of Issuance of Insurance Policy (CM–921).

*OMB Number:* 1215–0059.

*Frequency:* Annually.

*Affected Public:* Business or other for-profit; State, Local or Tribal Government.

*Number of Respondents:* 60.

*Estimated Time Per Respondent:* 10 minutes.

*Total Burden Hours:* 667 hours.

*Total Annualized capital/startup costs:* 0.

*Total annual costs (operating/maintaining systems or purchasing services):* $1,600.

*Description:* The CM–921 provides insurance carriers with the means to supply the Employment Standards Administration with information showing that a responsible coal mine operator is insured against its Federal Black Lung compensation liability pursuant to the requirements established in the Federal Black Lung Benefits Act.

*Agency:* Employment and Training Administration.

*Title:* Job Training Partnership (JTPA) Title III Biennial State Plan.

*OMB Number:* 1205–0273.

*Frequency:* Annually.

*Affected Public:* State, Local or Tribal Government.

*Number of Respondents:* 52.

*Estimated Time Per Respondent:* 20 Hours.

*Total Burden Hours:* 1,040.

*Total Annualized capital/startup costs:* 0.

*Total annual costs (operating/maintaining systems or purchasing services):* 0.

*Description:* The State Plan will provide the Department of Labor with a general description of each State's plans for the operation of Title III program and its utilization of JTPA funds for this purpose.

**Todd R. Owen,**

*Departmental Clearance Officer.*

[FR Doc. 98–1150 Filed 1–15–98; 8:45 am]

BILLING CODE 4510–24–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Availability of Funds and Solicitation for Grant Applications (SGA); Extension of the Closing Date for Receipt of Applications

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Extension of the closing date for receipt of applications.

**SUMMARY:** In the **Federal Register** of December 9, 1997 (62 FR 64886), the Department of Labor published a notice of availability of funds and SGA for engaging employers in State and local School-to-Work (STW) systems through efforts undertaken by industry groups and trade associations. This notice extends the closing date for receipt of applications for an additional 30 days. This action is necessary to insure adequate preparation time for receiving quality proposals.

**DATES:** The revised closing date for receipt of application is February 23, 1998.

**ADDRESSES:** Applications shall be mailed to: U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, Attention: Ms. Laura Cesario, Reference: SGA/DAA 98–003, 200 Constitution Ave., N.W., Room S–4203, Washington, D.C. 20210.

**FOR FURTHER INFORMATION CONTACT:** Division of Acquisition and Assistance, telephone (202) 219-8694 (this is not a toll free number). This notice will also be published on the Internet, on the Employment and Training Administration's Home Page at http://www.doleta.gov.

Signed at Washington, D.C., this 12th day of January, 1998.

**Laura A. Gesario,**

*Grant Officer.*

[FR Doc. 98–1106 Filed 1–15–98; 8:45 am]

BILLING CODE 4510–30–M

## 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 rates 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 supersedes 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 decisions 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, N.W., Room S–3014, Washington, D.C. 20210.

### Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. M0970041 dated February 14, 1997.

Agencies with construction projects pending, to which this wage decision would have been applicable, should utilize Wage Decision No. M0970013. Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

### Modifications of General Wage Determination Decisions

The number of decisions listed in 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*

New Jersey:
NJ970002 (Feb. 14, 1997)
NJ970003 (Feb. 14, 1997)
NJ970007 (Feb. 14, 1997)

*Volume II*

Maryland:
MD970001 (Feb. 14, 1997)
MD970002 (Feb. 14, 1997)
MD970031 (Feb. 14, 1997)

Virginia:
VA970014 (Feb. 14, 1997)
VA970064 (Feb. 14, 1997)

*Volume III*

Alabama:
AL970004 (Feb. 14, 1997)
AL970006 (Feb. 14, 1997)
AL970008 (Feb. 14, 1997)
AL970017 (Feb. 14, 1997)
AL970033 (Feb. 14, 1997)
AL970034 (Feb. 14, 1997)
AL970042 (Feb. 14, 1997)

Kentucky:
KY970001 (Feb. 14, 1997)
KY970002 (Feb. 14, 1997)
KY970003 (Feb. 14, 1997)
KY970004 (Feb. 14, 1997)
KY970006 (Feb. 14, 1997)
KY970007 (Feb. 14, 1997)
KY970025 (Feb. 14, 1997)
KY970029 (Feb. 14, 1997)
KY970032 (Feb. 14, 1997)
KY970035 (Feb. 14, 1997)

*Volume IV*

Illinois:
IL970001 (Feb. 14, 1997)
IL970002 (Feb. 14, 1997)
IL970003 (Feb. 14, 1997)
IL970004 (Feb. 14, 1997)
IL970005 (Feb. 14, 1997)
IL970006 (Feb. 14, 1997)

IL970007 (Feb. 14, 1997)
IL970008 (Feb. 14, 1997)
IL970009 (Feb. 14, 1997)
IL970018 (Feb. 14, 1997)
IL970023 (Feb. 14, 1997)
IL970025 (Feb. 14, 1997)
IL970048 (Feb. 14, 1997)
IL970057 (Feb. 14, 1997)
Indiana:
IN970002 (Feb. 14, 1997)
IN970005 (Feb. 14, 1997)
IN970006 (Feb. 14, 1997)
Minnesota:
MN970007 (Feb. 14, 1997)
MN970008 (Feb. 14, 1997)
MN970015 (Feb. 14, 1997)
MN970061 (Feb. 14, 1997)
Ohio:
OH970001 (Feb. 14, 1997)
OH970002 (Feb. 14, 1997)
OH970003 (Feb. 14, 1997)
OH970014 (Feb. 14, 1997)
OH970028 (Feb. 14, 1997)
OH970029 (Feb. 14, 1997)
OH970034 (Feb. 14, 1997)
OH970035 (Feb. 14, 1997)

*Volume V*

Arkansas:
AR970001 (Feb. 14, 1997)
Iowa:
IA970002 (Feb. 14, 1997)
Lousiana:
LA970004 (Feb. 14, 1997)
LA970005 (Feb. 14, 1997)
LA970009 (Feb. 14, 1997)
LA970014 (Feb. 14, 1997)
LA970015 (Feb. 14, 1997)
LA970017 (Feb. 14, 1997)
LA970018 (Feb. 14, 1997)
Missouri:
MO970001 (Feb. 14, 1997)
MO970003 (Feb. 14, 1997)
MO970005 (Feb. 14, 1997)
MO970006 (Feb. 14, 1997)
MO970007 (Feb. 14, 1997)
MO970010 (Feb. 14, 1997)
MO970013 (Feb. 14, 1997)
MO970043 (Feb. 14, 1997)
MO970051 (Feb. 14, 1997)
MO970052 (Feb. 14, 1997)
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**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.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscriptions to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

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 interests, since subscriptions may be ordered for any or all of the seven 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 are distributed to subscribers.

Signed at Washington, DC this 9th day of January 1998.

**Carl J. Poleskey,**

*Chief, Branch of Construction Wage Determination.*

[FR Doc. 98–949 Filed 1–15–98; 8:45 am]

BILLING CODE 4510–27–M

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## DEPARTMENT OF LABOR

## Mine Safety and Health Administration

### Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

**1. Jim Walter Resources, Inc.**

[Docket Nos. M–97–128–C and M–97–129–C]

Jim Walter Resources, Inc., P.O. Box 133, Brookwood, Alabama 35444 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its No. 5 Mine (I.D. No. 01–01322), and its No. 7 Mine (I.D. No. 01–01401) both located in Tuscaloosa County, Alabama. The petitioner requests that paragraph 11 of its previous petitions, docket numbers M–85–45–C and M–85–9–C, be amended to read as follows: Where high-voltage cable that moves during normal operation of the longwall is damaged to the extent that any metallic component of the cable is damaged, the cable shall be repaired and the outer jacket of such repair shall be vulcanized with flame-resistant material. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**2. Par L Coal Company**

[Docket No. M–97–130–C]

Par L Coal Company, R.D. #1, Box 56A, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.364(b) (1), (4), and (5) (weekly examination) to its Tracy Vein Slope (I.D. No. 36–08685) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake haulage slope and primary

escapeway cannot be traveled safely. The petitioner proposes to examine these areas from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**3. Par L Coal Company**

[Docket No. M–97–131–C]

Par L Coal Company, R.D. #1, Box 56A, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1100–2 (quantity and location of firefighting equipment) to its Tracy Vein Slope (I.D. No. 36–08685) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**4. Par L Coal Company**

[Docket No. M–97–132–C]

Par L Coal Company, R.D. #1, Box 56A, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1200 (d) & (i) (mine map) to its Tracy Vein Slope (I.D. No. 36–08685) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000-foot intervals of advance from the intake slope and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**5. Par L Coal Company**

[Docket No. M–97–133–C]

Par L Coal Company, R.D. #1, Box 56A, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75–1400 (hoisting equipment; general) to its Tracy Vein Slope (I.D. No. 36–08685) located in Schuylkill County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) in transporting persons without installing safety catches or other no less effective devices but instead use increased rope strength/safety factor and secondary safety rope connection in place of such devices. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**6. Par L Coal Company**

[Docket No. M–97–134–C]

Par L Coal Company, R.D. #1, Box 56A, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its Tracy Vein Slope (I.D. No. 36–08685) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps annually instead of every 6 months, as required, and to update maps daily by hand notations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**7. Turris Coal Company**

[Docket No. M–97–135–C]

Turris Coal Company, P.O. Box 21, Elkhart, Illinois 62634 has filed a petition to modify the application of 30 CFR 75.332(a)(2) (working sections and working places) to its Elkhart Mine (I.D. No. 11–02664) located in Logan County, Illinois. The petitioner proposes to use the gathering arms and conveyor chain of the continuous miner to clean and load the loose rock and coal that is left on the mine floor after the continuous miner has completed its cut while the second continuous miner on the high performance unit simultaneously starts its cut; and to have the continuous miner maintain the same ventilation and water sprays required during the cut. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**8. Jim Walter Resources, Inc.**

[Docket No. M–97–136–C]

Jim Walter Resources, Inc. P.O. Box 133, Brookwood, Alabama 35444 has filed a petition to modify the application of 30 CFR 75.1002 (trolley wires, trolley feeder wires, high-voltage cables and transformers) to its No. 3 Mine (I.D. No. 01–00758) located in Jefferson County, Alabama; and its No. 4 Mine (I.D. No. 01–01247) located in Tuscaloosa County, Alabama. The petitioner requests that paragraph 13 of its previous petition, docket number M–93–209–C, be amended to read as follows: Where a high-voltage cable that moves during normal operation of the longwall is damaged to the extent that any metallic component of the cable is damaged, the cable shall be repaired and the outer jacket of such repair shall be vulcanized with flame-resistant material. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**9. Dominion Coal Corporation**

[Docket No. M–97–137–C]

Dominion Coal Corporation, P.O. Box 70, Vansant, Virginia 24656 has filed a petition to modify the application of 30 CFR 75.360(b)(5) (preshift examination) to its Mine No. 36 (I.D. No. 44–06759) located in Buchanan County, Virginia. The petitioner requests a variance from preshift of seals along intake air courses since the intake air passes by both sides of the seals to ventilate working sections where anyone is scheduled to work during the oncoming shifts. The petitioner asserts that application of the mandatory standard would provide at least the same measure of protection as would the mandatory standard.

**10. Consolidation Coal Company**

[Docket No. M–97–138–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.1906(b) (transport of diesel fuel) to its Buchanan Mine (I.D. No. 44–04856) located in Buchanan County, Virginia. The petitioner requests a variance to permit transportation of multiple safety cans on a single vehicle for certain specified applications. The petitioner proposes to refuel equipment involved in longwall moves; to transport multiple safety cans, not to exceed six, by any one vehicle from the portal bottom or underground storage facility to the longwall section to refuel equipment; to equip three 20-pound fire extinguishers on a vehicle transporting more than one safety can filled with diesel fuel; to equip a manually actuated fire suppression system on a vehicle transporting more than one safety can filled with diesel fuel; to provide additional fire protection by a mine-wide computerized CO detection system; to secure the safety cans in the vehicle by protective retaining cylinders; to have the vehicle transport only miners, and

the vehicle operator while transporting diesel-filled safety cans; and to transfer the diesel fuel from the safety cans to equipment fuel tanks upon arrival on the longwall section. The petitioner states that the safety cans would not be stored on the longwall section; and that following refueling, the empty safety cans would be returned to the vehicle and transported to the surface or underground storage facility. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**11. Energy West Mining Company**

[Docket No. M–97–139–C]

Energy West Mining Company, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Trail Mountain Mine (I.D. No. 42–01211) located in Emery County, Utah. The petitioner requests that Item (o) of the Proposed Decision and Order for its previously granted petition, docket number M–94–166–C, be amended to incorporate new language specified in this petition. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**12. Energy West Mining Company**

[Docket No. M–97–140–C]

Energy West Mining Company, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.352 (return air courses) to its Trail Mountain Mine (I.D. No. 42–01211) located in Emery County, Utah. The petitioner requests that Item (o) of the Proposed Decision and Order for its previously granted petition, docket number M–94–167–C, be amended to incorporate new language specified in this petition. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**13. M & M Anthracite Coal Company**

[Docket No. M–97–141–C]

M & M Anthracite Coal Company, 245 2nd Street, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Little Tracey Slope (I.D. No. 36–08693) located in Schuylkill County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) in transporting persons without installing safety catches or other no less effective devices but instead use increased rope strength/safety factor and secondary safety rope connection in place of such devices. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**14. Elk Run Coal Company**

[Docket No. M–97–142–C]

Elk Run Coal Company, Box 497, Sylvester, West Virginia 25193 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Laurel Eagle Mine (I.D. No. 46–08181) located in Raleigh County, West Virginia; and its Black Knight II Mine (I.D. No. 46–08402) located in Boone County, West Virginia. The petitioner proposes to use permanently installed, spring-loaded locking devices on mobile battery-powered machines to prevent unintentional loosening of battery plugs from battery receptacles in order to eliminate the hazards associated with difficult removal of padlocks during emergency situations, instead of using padlocks. The petitioner asserts that application of the mandatory standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**15. Tg Soda Ash, Inc.**

[Docket No. M–97–13–M]

Tg Soda Ash, Inc., P.O. Box 100, Granger, Wyoming 82934 has filed a petition to modify the application of 30 CFR 57.22305 (approved equipment (III mines) to its Wyoming Soda Ash Trona Mine (I.D. No. 48–00639) located in Sweetwater County, Wyoming. The petitioner proposes to operate a non-permissible pump in an area of the mine that was previously a shortwall panel. The petitioner proposes to operate approved equipment in by the last open break or in areas where methane may enter the airstream. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**16. Getchell Gold Corporation**

[Docket No. M–97–14–M]

Getchell Gold Corporation, P.O. Box 220, 28 Miles N.E., Golconda, Nevada 89414 has filed a petition to modify the application of 30 CFR 57.14130 (roll-over protective structures (ROPS) and seat belts for surface equipment) to its Getchell Mine (I.D. No. 26–02233) located in Humboldt County, Nevada. The petitioner requests variance from the use of the ROPS portion of the mandatory standard for its John Deere Model 570B Grader, serial number DW570BX5544565 and the Caterpillar D3C Dozer, serial number 6SL0153 equipment used primarily underground. The petitioner asserts that using this equipment underground without rollover protection would present a minimum exposure to the miners.

**Request for Comments**

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 17, 1998. Copies of these petitions are available for inspection at that address.

Dated: January 13, 1998.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations, and Variances.*

[FR Doc. 98–1152 Filed 1–15–98; 8:45 am]

BILLING CODE 4510–43–P

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. NRTL–1–93]**

### Wyle Laboratories, Inc., Request for Change of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA); Labor.

**ACTION:** Notice of change in recognition as a Nationally Recognized Testing Laboratory (NRTL).

**SUMMARY:** This notice announces the Agency's final decision on the Wyle Laboratories' request to remove a restriction in its recognition as a NRTL under 29 CFR 1910.7.

**DATES:** The change is effective this January 16, 1998.

**FOR FURTHER INFORMATION CONTACT:** Bernard Pasquet, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653, Washington, D.C. 20210, (202) 219–7056.

**SUPPLEMENTARY INFORMATION:**

**Notice of Final Decision**

Wyle Laboratories, Inc. (Wyle), previously made application pursuant

to 29 CFR 1910.7, for recognition as a Nationally Recognized Testing Laboratory (see 59 FR 783, 1/6/94), and was so recognized (see 59 FR 37509, 7/22/94). As a part of this notice of recognition, a condition was imposed by OSHA that Wyle ''will not test certify any equipment or materials for a client which installs its equipment in an electronic enclosure cabinet manufactured or distributed by Wyle.'' This condition stemmed from the ownership by Wyle of an Electronic Enclosures Division, which manufactured and distributed electronic enclosures. Wyle Laboratories informed OSHA by letter dated July 15, 1997, that it has sold its Electronic Enclosure Division in its entirety to Electronic Enclosures, Inc., a U.S. subsidiary of the Walker Dickson Group of Edinburgh, Scotland. Wyle also requested that OSHA remove the previously described condition, and notice is hereby given that this condition of Wyle's recognition is removed. While the sale of Division moots this restriction, a notice is appropriate to amend the public record of Wyle's recognition.

The address of the laboratory covered by this request is: Wyle Laboratories, 7800 Highway 20 West, Huntsville, Alabama 35807.

All other conditions and requirements of Wyle's recognition remain the same.

Since this request by Wyle does not fall within the public notice requirements of 29 CFR 1910.7, this is the only notice that OSHA will publish on this decision. A copy of Wyle's July 15, 1997 letter to OSHA is available for inspection and duplication at the Docket Office, Room N–2634, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (Docket No. NRTL–1–93).

(Authority: 29 CFR 1910.7)

Signed at Washington, D.C. this 7th day of January 1998.

**Charles N. Jeffress,**

*Assistant Secretary.*

[FR Doc. 98–1151 Filed 1–15–98; 8:45 am]

BILLING CODE 4510–26–M

## LEGAL SERVICES CORPORATION

### Sunshine Act Meeting of the Board of Directors

**TIME AND DATE:** The Legal Services Corporation Board of Directors will meet by teleconference on January 22, 1998, at 2:00 p.m. EST.

**STATUS OF MEETING:** Open.

**LOCATION:** Members of the Board will participate by way of telephonic conferencing equipment allowing them all to hear one another. Members of the Corporation's staff and the public will be able to hear and participate in the meeting by means of telephonic conferencing equipment set up for this purpose in the Corporation's Conference Room, on the 11th floor of 750 First Street, NE., Washington, DC 20002.

**MATTERS TO BE CONSIDERED:**

1. Approval of agenda.
2. Consider and act on whether to reduce the Corporation's budget mark.
3. Consider and act on proposed appointments to the Vice Presidencies established by the Board on November 15, 1997.
4. Consider and act on an individual Corporate officer's request for permission to receive compensation from a source other than the Corporation while on leave from LSC.
5. Consider and act on other business.

**CONTACT PERSON FOR INFORMATION:** Victor M. Fortuno, General Counsel and Secretary of the Corporation, (202) 336–8810.

**SPECIAL NEEDS:** Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify JoAnn Gretch, at (202) 336–8810.

Dated: January 14, 1998.

**Victor M. Fortuno,**

*General Counsel and Secretary of the Corporation.*

[FR Doc. 98–1242 Filed 1–14–98; 12:04 pm]

BILLING CODE 7050–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–410]**

### New York State Electric & Gas Corporation, Nine Mile Point Nuclear Station, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an Order approving, under 10 CFR 50.80, an application regarding a proposed indirect transfer of control of ownership and possessory rights held by New York State Electric & Gas Corporation (NYSEG) under the operating license for Nine Mile Point Nuclear Station, Unit No. 2 (NMP2). The indirect transfer would be to a holding company, not yet named, to be created over NYSEG in accordance with an executed ''Agreement Concerning the Competitive Rate and Restructuring Plan of New York State Electric & Gas Corporation.'' NYSEG is licensed by the Commission to own and possess an 18-percent interest in NMP2, located in the town of Scriba, Oswego County, New York.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action would consent to the indirect transfer of control of the license to the extent effected by NYSEG becoming a subsidiary of the holding company in connection with a proposed plan of restructuring. Under the restructuring plan, the outstanding shares of NYSEG's common stock (other than shares for which appraisal rights are properly exercised) are to be exchanged for common stock of the holding company on a share-for-share basis, such that the holding company will own all of the outstanding common stock of NYSEG. NYSEG would divest its interest in coal-fired power plants, but would continue to be an ''electric utility'' as defined in 10 CFR 50.2, engaged in the transmission, distribution and, in the case of NMP2 and hydroelectric facilities, the generation of electricity. NYSEG would retain its ownership interest in NMP2 and continue to be a licensee of NMP2. No direct transfer of the operating license or ownership interests in the station would result from the proposed restructuring. The restructuring of NYSEG would not involve any change to either the management organization or technical personnel of Niagara Mohawk Power Corporation (NMPC), which is responsible for operating and maintaining NMP2 and is not involved in the restructuring of NYSEG. The proposed action is in accordance with NYSEG's application dated September 18, 1997, as supplemented October 20 and 27, 1997.

*The Need for the Proposed Action*

The proposed action is required to enable NYSEG to restructure as described above.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed corporate restructuring and concludes that there will be no physical or operational changes to NMP2 as a result. The corporate restructuring will not affect the qualifications or organizational affiliation of the personnel who operate

and maintain the facility, as NMPC will continue to be responsible for the maintenance and operation of NMP2 and is not involved in the restructuring of NYSEG.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the restructuring would not affect nonradiological plant effluents and would have no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

*Alternatives to the Proposed Action*

Since the Commission has concluded there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statements Related to the Operation of Nine Mile Point Nuclear Station, Unit No. 2, (NUREG–1085) dated May 1985.

*Agencies and Persons Contacted*

In accordance with its stated policy, on January 12, 1998, the staff consulted with the New York State official, Mr. Jack Spath, regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see NYSEG's application dated September 18, as supplemented by letters dated October 20 and 27, 1997, and January 6, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 12th day of January 1998.

For the Nuclear Regulatory Commission.

**S. Singh Bajwa,**

*Director Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 98–1108 Filed 1–15–98; 8:45 am]

BILLING CODE 7590–01–P

## POSTAL SERVICE

### Sunshine Act Meeting, Board of Governors; Notification of Items Added to Meeting Agenda

**DATE OF MEETING:** January 5, 1998.

**STATUS:** Closed.

**PREVIOUS ANNOUNCEMENT:** 62 FR 66884, December 22, 1997.

**CHANGE:** At its meeting on January 5, 1998, the Board of Governors of the United States Postal Service voted unanimously to add two items to the agenda of its closed meeting held on that date:

1. Performance Measurement.
2. Facilities Redevelopment Project.

**CONTACT PERSON FOR MORE INFORMATION CONTACT:** Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W. Washington, D.C. 20260–1000. Telephone (202) 268–4800.

**Thomas J. Koerber,**

*Secretary.*

[FR Doc. 98–1190 Filed 1–13–98; 4:39 pm]

BILLING CODE 7710–12–M

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–22996; File No. 812–10604]**

### The Dreyfus Socially Responsible Growth Fund, Inc., and The Dreyfus Corporation

January 9, 1998.

**AGENCY:** Securities and Exchange Commission (the ''SEC'' or the ''Commission'').

**ACTION:** Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') for exemptions from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

**SUMMARY OF APPLICATION:** Applicants seek an order to permit shares of The Dreyfus Socially Responsible Growth Fund and shares of any other investment company or portfolio thereof that is designed to fund insurance products and for which The Dreyfus Corporation or any of its affiliates may serve in the future, as investment adviser, administrator, manager, principal underwriter, or sponsor (such other investment companies or investment portfolios thereof being hereinafter referred to, individually, as a ''Future Fund'' and collectively, as the ''Future Funds'') to be sold to and held by: (1) Separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; and (2) qualified pension and retirement plans outside of the separate account context.

**APPLICANTS:** The Dreyfus Socially Responsible Growth Fund, Inc. (the ''Fund'') and The Dreyfus Corporation (''Dreyfus'').

**FILING DATE:** The application was filed on April 4, 1997, amended and restated on October 20, 1997, and amended on December 16, 1997.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on February 3, 1998, and 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 interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 200 Park Avenue, New York, NY 10166.

**FOR FURTHER INFORMATION CONTACT:** Zandra Y Bailes, Senior Counsel, or Mark C. Amorosi, Branch Chief, Division of Investment Management, Office of Insurance Products, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application. The

complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

**Applicants' Representations**

1. The Fund is a Maryland corporation and is registered under the 1940 Act as an open-end diversified management investment company. Its authorized capital stock presently consists of one class of stock, but in the future the Fund may create one or more additional classes of stock, each corresponding to a portfolio of securities.

2. Dreyfus, an investment adviser registered under the Investment Advisers Act of 1940, is the investment adviser for the Fund. NCM Capital Management Group, Inc. is the sub-investment adviser for the Fund and provides day-to-day management of the Fund's portfolio.

3. The Fund currently offers its shares to insurance companies as the investment vehicle for their separate accounts that fund variable annuity contracts and intends to offer its shares to affiliated and unaffiliated insurance companies as the investment vehicle for their separate accounts that fund variable life insurance contracts (together, variable annuity contracts and variable life insurance contracts are referred to herein as ''Variable Contracts''). Separate accounts owning shares of the Fund and their insurance company depositors are referred to herein as ''Participating Separate Accounts'' and ''Participating Insurance Companies,'' respectively.

4. Each Participating Insurance Company will enter into a participation agreement with the Fund on behalf of its Participating Separate Account. The role of the Fund under this agreement, insofar as the federal securities laws are applicable, will consist of offering shares to the Participating Separate Accounts and complying with any conditions that the Commission may impose upon granting the order requested in the application.

5. Applicants also propose that the Fund offer and sell its shares directly to qualified pension and retirement plans (''Qualified Plans'' or ''Plans'') outside of the separate account context.

**Applicants' Legal Analysis**

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provisions of the 1940 Act or the rules or regulations 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.

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) under the 1940 Act provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–2(b)(15) are available, however, only where the management investment company underlying the separate account (''underlying fund'') offers its shares ''*exclusively* to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company'' (emphasis supplied).[1] Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or a flexible premium variable life insurance separate account of the same company or of any affiliated life insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same insurance company or of any affiliated life insurance company is referred to herein as ''mixed funding.'' In addition, the relief granted by Rule 6e–2(b)(15) is not available if shares of the underlying management investment company are offered to variable annuity or variable life insurance separate accounts of unaffiliated life insurance companies. The use of a common management investment company as the underlying investment medium for separate accounts of unaffiliated life insurance companies is referred to herein as ''shared funding.'' Furthermore, Rule 6e–2(b)(15) does not contemplate that shares of the underlying fund might also be sold to Qualified Plans.

3. In connection with the funding of flexible premium variable life insurance contracts issues through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions, however, are available only where the separate account's underlying fund offers its shares ''*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company'' (emphasis supplied).[2] Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account but does not permit shared funding. Also, Rule 6e–3(T) does not contemplate the sale of shares of the underlying fund to Qualified Plans.

4. Applicants state that changes in the federal tax law have created the opportunity for the Fund to substantially increase its net assets by selling shares to Qualified Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the assets underlying Variable Contracts. The Code provides that Variable Contracts will not be treated as annuity contracts or life insurance contracts, as the case may be, for any period (or any subsequent period) for which the underlying assets are not, in accordance with regulations issued by the Treasury Department (the ''Regulations''), adequately diversified. On March 2, 1989, the Treasury Department issued regulations (Treas. Reg. 1.817–5) which established specific diversification requirements for investment portfolios underlying Variable Contracts. The regulations generally provide that, in order to meet these diversification requirements, all of the beneficial interests in the underlying investment company must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, the Regulations also contain an exception to this requirement that permits trustees of a Qualified Plan to hold shares of an investment company, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company as an adequately diversified underlying investment for Variable Contracts issued through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii)).

[1] The exemptions provided by Rule 6e–2 also are available to the investment adviser, principal underwriter, and sponsor or depositor of the separate account.

[2] The exemptions provided by Rule 6e–3(T) also are available to the investment adviser, principal underwriter, and sponsor or depositor of the separate account.

5. Applicants note that if the Fund and Future Funds were to sell their shares only to Qualified Plans, exemptive relief under Rule 6e–2 and Rule 6e–3(T) would not be necessary. The relief provided under Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15) does not relate to qualified pension and retirement plans or to a registered investment company's ability to sell its shares to such plans.

6. Applicants also note that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Regulations. Thus, the sale of shares to both separate accounts and Qualified Plans was not contemplated at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

7. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2) of the 1940 Act. Rules 6e–2(b)(15)(i) and (ii) and 6e–3(T)(b)(15)(i) and (ii) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying fund.

8. Applicants state that the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9 of the 1940 Act limits, in effect, the amount of monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants state that those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals involved in an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies funding the separate accounts.

9. Applicants state that neither the Participating Insurance Companies nor the Qualified Plans are expected to play any role in the management or administration of the Fund or Future Funds. Those individuals who participate in the management or administration of the Fund and Future Funds will remain the same regardless of which separate accounts, insurance companies or Qualified Plans use such Funds. Applicants maintain that applying the requirements of Section 9(a) because of investment by other insurers' separate accounts and Qualified Plans would be unjustified and would not serve any regulatory purpose. Moreover, Qualified Plans, unlike separate accounts, are not themselves investment companies, and therefore are not subject to Section 9 of the 1940 Act. Furthermore, it is not anticipated that a Qualified Plan would be deemed to be an affiliated person of the Fund or any Future Fund by virtue of its shareholders.

10. Applicants state that Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. More specifically, Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contractowners with respect to the investments of an underlying fund or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority and subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of the Rules. In addition, Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that the insurance company may disregard contractowner's voting instructions if the contractowners initiate any change in such company's investment policies, principal underwriter or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii) (B) and (C) of the Rules).

11. Applicants assert that Qualified Plans, which are not registered as investment companies under the 1940 Act, have no requirement to pass through voting rights to plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with Plan assets to certain specified persons. Under Section 403(a) of the Employee Retirement Income Security Act (''ERISA''), shares of a fund sold to a Qualified Plan must be held by the trustees of the Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) When the Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA, and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies.

12. Where a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants.

13. Where a Qualified Plan does not provide participants with the right to give voting instructions, Applicants submit that there is no potential for material irreconcilable conflicts of interest between or among variable contract holders and Plan investors with respect to voting of the respective Fund's shares. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to such Qualified Plans since the Qualified Plans are not entitled to pass-through voting privileges.

14. Even if a Qualified Plan were to hold a controlling interest in the Fund or a Future Fund, Applicants argue that such control would not disadvantage other investors in such Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in the Fund or a Future Fund by a Plan will not create any of the voting complications occasioned by mixed funding or shared funding. Unlike mixed or shared funding, Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

15. Where a Plan provides participants with the right to give voting instructions, Applicants see no reason to believe that participants in Qualified Plans generally or those in a particular Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage variable

contract holders. The purchase of shares of the Fund or Future Funds by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

16. Applicants submit that the prohibitions on mixed and shared funding might reflect some concern with possible divergent interests among different classes of investors. Applicants assert that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. Where insurers are domiciled in different states, it is possible that the particular state insurance regulatory body in a state which one insurance company is domiciled could require action that is inconsistent with the requirements of insurance regulators of other states in which other insurance companies are domiciled. The fact that a single insurer and its affiliates offer their insurance products in different states does not create a significantly different or enlarged problem.

17. Applicants submit that shared funding is, in this respect, no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit under various circumstances. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, Applicants submit that the conditions set forth in the application and included in this notice are designed to safeguard against and provide procedures for resolving any adverse effects that differences among state regulatory requirements may produce. For instance, if a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its Participating Separate Account's investment in the relevant Fund.

18. Applicants assert that the right of an insurance company under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) to disregard contractowners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contractowner voting instructions only with respect to certain specified items and under certain specified conditions. Affiliation does not eliminate the potential, if any exits, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contractowners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that an insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations.

19. A particular insurer's disregard of voting instructions nevertheless could conflict with the majority of contractowner voting instructions. The insurer's action could arguably be different from the determination of all or some of the other insurers (including affiliated insurers) that the contractowners' voting instructions should prevail, and could either preclude a majority vote approving the change or could represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, the insurer may be required, at the election of the relevant Fund to withdraw its Participating Separate Account's investment in such Fund, and no charge or penalty would be imposed as a result of such withdrawal.

20. Applicants submit that there is no reason why the investment policies of the Fund or any Future Fund would or should be materially different from what those policies would or should be if the Funds funded only annuity contracts or only scheduled or flexible premium life contracts. In this regard, Applicants note that each type of insurance product is designed as a long-term investment program. In addition, Applicants represent that neither the Fund or any Future Fund will be managed to favor or disfavor any particular insurer or type of insurance product.

21. Furthermore, applicants submit that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contractowners is composed of individuals of diverse financial status, age, insurance and investment goals. A fund supporting even one type of insurance product must accommodate those factors in order to attract and retain purchasers.

22. Applicants do not believe that the sale of shares of the Fund and Future Funds to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance contractowners. Applicants note that Section 817(h) of the Code requires that the investments made by variable annuity and variable life insurance separate accounts be ''adequately diversified.'' Treasury Department Regulations issued under Section 817(h) provide that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Regulation specifically permits ''qualified pension or retirement plans'' and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that neither the Code, nor the Treasury Regulations or Revenue Rulings thereunder, present any inherent conflicts of interest if Qualified Plans, variable annuity separate accounts, and variable life insurance separate accounts all invest in the same underlying fund.

23. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Fund and Future Funds. When distributions are to be made, and a Separate Account or Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account and Qualified Plan will redeem shares of the Fund and the Future Funds at their respective net asset value. A Qualified Plan will make distributions in accordance with the terms of the Plan.

24. Applicants state that they do not see any greater potential for material irreconcilable conflicts arising between the interests of participants under Qualified Plans and contractowners of Participating Separate Accounts from possible future changes in the federal tax laws than that which already exist between variable annuity contractowners and variable life insurance contractowners.

25. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving voting rights to Participating Separate Account contractowners and to Qualified Plans. Applicants represent that the Fund and Future Funds will inform each shareholder, including each Participating Insurance Company and Qualified Plan, of information necessary for the shareholder meeting, including their respective share of ownership in the relevant Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its participation agreement with the

relevant Fund. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of the Fund and Future Funds would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

26. Applicants submit that there are no conflicts between the contractowners of the Participating Separate Accounts and Qualified Plan participants with respect to the state insurance commissioners' veto powers over investment objectives. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming complex transactions must be undertaken to accomplish such redemptions and transfers. Conversely, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can make the decision quickly and redeem their interest in the Fund and Future Funds and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts or, as is the case with most Qualified Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants have concluded that even if there should arise issues where the interests of contractowners and the interests of Qualified Plans are in conflict, the issues can be almost immediately resolved since the trustees of (or participants in) the Qualified Plans can, on their own, redeem the shares out of the Fund and Future Funds.

27. Applicants assert that various factors have limited the number of insurance companies that offer variable annuities and variable life insurance contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments) and the lack of name recognition by the public of certain insurers as investment experts. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the Variable Contract business on their own.

28. Applicants contend that the use of the Fund and Future Funds as common investment vehicles for Variable Contracts would reduce or alleviate these concerns. Participating Insurance Companies will benefit not only from the investment and administrative expertise of the Fund's and Future Funds' investment adviser, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Fund and Future Funds available for mixed and shared funding may encourage more insurance companies to offer Variable Contracts, and accordingly could result in increased competition with respect to both Variable Contract design and pricing, which can be expected to result in more product variation and lower charges. Applicants state that mixed and shared funding would benefit variable contractowners by eliminating a significant portion of the costs of establishing and administering separate funds. Applicants also assert that the sale of shares of the Fund and Future Funds to Qualified Plans in addition to separate accounts of Participating Insurance Companies will result in an increased amount of assets available for investment by such Funds. This may benefit variable contractowners by promoting economies of scale, by permitting increased safety of investments through greater diversification, and by making the addition of new portfolios more feasible.

**Applicants' Conditions**

Applicants have consented to the following conditions:

1. A majority of the Board of each Fund shall consist of persons who are not ''interested persons'' of such Fund, as defined by Section 2(a)(19) of the 1940 Act, and the Rules thereunder, as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification or bona fide resignation of any Trustee or Director, then the operation of this condition shall be suspended (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its Fund for the existence of any material irreconcilable conflict among the interests of the contract holders of all Participating Separate Accounts and of participants of Qualified Plans investing in such Fund and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of such Fund are being managed; (e) a difference in voting instructions given by variable annuity contractowners and variable life insurance contractowners; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contractowners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of plan participants.

3. The Participating Insurance Companies, Dreyfus, and any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of the Fund or a Future Fund (the ''Participants'') shall report any potential or existing conflicts to the applicable Board. Participants will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever it has determined to disregard contractowners voting instructions, and, if pass-through voting is applicable, an obligation by each Participant to inform the Board whenever it has determined to disregard plan participant voting instructions. The responsibility to report such conflicts and information, and to assist the Board will be contractual obligations of all Participants under their agreements governing participation in the Fund and Future Funds, and such agreements, in the case of Participating Insurance Companies, shall provide that such responsibilities will be carried out with a view only to the interests of the contractowners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Participants, and such agreements will provide that their responsibilities will be carried out with a view only to the interests of plan participants.

4. If it is determined by a majority of a Board, or a majority of its disinterested members, that a material irreconcilable conflict exists, the relevant Participants shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested members of the Board), take whatever

steps are necessary to eliminate the material irreconcilable conflict, including: (1) Withdrawing the assets allocable to some or all of the Participating Separate Accounts from the relevant Fund and reinvesting such assets in a different investment medium, which may include another portfolio of such Fund, if any, or, in the case of Participating Insurance Companies, submitting the question whether such segregation should be implemented to a vote of all affected contractowners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contractowners, life insurance contractowners or Variable Contractowners of one or more Participant) that votes in favor of such segregation, or offering to the affected contractowners the option of making such a charge; and (2) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contractowners' voting instructions and that decision represents a minority position or would preclude a majority vote, such Participant may be required, at the relevant Fund's election, to withdraw its separate account's investment in such Fund and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represent a minority position or would preclude a majority vote, the Plan may be required, at the election of the Fund, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal.

The responsibility to take remedial action in the event of a determination by a Board of a material irreconcilable conflict, and to bear the cost of such remedial action, will be a contractual obligation of all Participants under their agreements governing participation in the relevant Fund and this responsibility, in the case of Participating Insurance Companies, will be carried out with a view only to the interest of contractowners and, in the case of Qualified Plans, will be carried out with a view only to the interests of plan participants. A majority of the disinterested members of the Board shall determine whether any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Fund, any Future Fund or Dreyfus be required to establish a new funding medium for any Variable Contract. No Participating Insurance Company will be required to establish a new funding medium for any Variable Contracts if an offer to do so has been declined by the vote of a majority of contractowners materially and adversely affected by the irreconcilable material conflict. Further, no Qualified Plan will be required by this condition to establish a new funding medium for the Plan if: (a) A majority of the plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to documents governing the Qualified Plan, the Plan makes each decision without a plan participant vote.

5. The determination by a Board of the existence of a material irreconcilable conflict and its implications shall be promptly made known in writing to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all contractowners to the extent that the Commission continues to interpret the 1940 Act to require pass-through voting for contractowners. Accordingly, such Participants, where applicable, will vote shares of the applicable Fund held in its Participating Separate Accounts in a manner consistent with voting instructions timely received from contractowners. Participating Insurance Companies shall be responsible for assuring that each Participating Separate Account investing in a Fund calculates voting privileges in a manner consistent with other Participants. The obligation to calculate voting privileges as provided in the application shall be a contractual obligation of all Participating Insurance Companies under their agreement governing participation in a Fund. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions as well as shares it owns in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law government Plan documents.

7. All reports received by a Board with respect to potential or existing conflicts and all Board action with regard to (a) determination of the existence of a conflict, (b) notification of Participants of the existence of a conflict and (c) determination of whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the meetings of the Board or other appropriate records, and such minutes or other records will be made available to the Commission upon request.

8. The Fund and each Future Fund will notify all Participants that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund shall disclose in its prospectus that: (a) Shares of such Fund may be offered to insurance company separate accounts of both annuity and life insurance variable contracts, and to Qualified Plans; (b) due to differences of tax treatment and other considerations, the interest of various contractowners participating in such Fund and the interest of Qualified Plans investing in such Fund may conflict; and (c) the Board will monitor such Fund for any material conflicts and determine what action, if any, should be taken.

9. The Fund and each Future Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of such Fund), and, in particular, each Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Fund and Future Funds are or will not be the type of trust described in Section 16(c) of the 1940 Act), as well as with Section 16(a), and, if applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

10. If and to the extent Rule 6e–2 or 6e–3(T) is amended, or proposed Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules promulgated under the 1940 Act with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested in the application, then the Fund and each Future Fund and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 or 6e–3(T), as amended, or Rule 6e–3, as adopted, to the extent such rules are applicable.

11. The Participants shall at least annually submit to the Board of each Fund such reports, materials or data as a Board may reasonably request so that the Board may fully carry out obligations imposed upon them by the conditions contained in the application. Such reports, materials and data shall be

submitted more frequently if deemed appropriate by the applicable Board. The obligations of the Participants to provide these reports, materials and data to a Board when it so reasonably requests, shall be a contractual obligation of all Participants under their agreement governing participation in the Fund and Future Funds.

12. Neither the Fund nor any Future Fund will accept a purchase order from a Plan if such purchase would make the Plan shareholder or owner of 10% or more of the assets of such Fund unless such Plan executes a fund participation agreement with the relevant Fund, including the conditions set forth herein to the extent applicable. A Plan shareholder will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of such Fund.

**Conclusion**

For the reasons summarized above, Applicants assert 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.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–39540; File No. SR–CHX–97–26]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Display of Limit Orders

January 12, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 1, 1997, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Article XX, Rule 7 to expressly provide for the display of customer limit orders as contained in Rule 11Ac1–4 under the Act and other limit orders. Proposed new language is italicized.

Article XX

Rule 7

. . . Interpretation and Policies

.05 Quotation sizes, unless otherwise specified, shall be assumed to be for 100 shares. Where bids or offers are made at the same price the aggregate quotation size of such equal bids or offers shall be inputted into the quotation system. Such aggregate sizes shall remain firm until withdrawn unless exempted under one of the conditions specified in paragraphs .06–.09 of this Rule. *With respect to limit orders received by specialists, each specialist shall publish immediately (i.e., as soon as practicable, which under normal market conditions means no later than 30 seconds from time of receipt) a bid or offer that reflects:*

*(i) the price and full size of each limit order that is at a price that would improve the specialist's bid or offer in such security; and*

*(ii) the full size of each limit order that is priced equal to the specialist's bid or offer for such security;*

*The requirements with respect to specialists' display of limit orders shall not apply to any limit order that is:*

*(i) executed upon receipt of the order;*

*(ii) placed by a person or entity who expressly requests, either at the time the order is placed or prior thereto pursuant to an individually negotiated agreement with respect to such person's orders, that the order not be displayed;*

*(iii) and odd-lot order;*

*(iv) delivered immediately upon receipt to an exchange or association-sponsored system or an electronic communications network that complies with the requirements of Securities and Exchange Commission Rule 11Ac1–1(c)(5) under the Securities Exchange Act with respect to that order;*

*(v) delivered immediately upon receipt to another exchange member or over-the-counter market maker that complies with the requirements of Securities and Exchange Commission Rule 11Ac1–4 under the Securities Exchange Act with respect to that order; or*

*(vi) an ''all or none'' order.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Commission has recently adopted Rule 11Ac1–4 under the Act[2] which, among other things, requires specialists to immediately display the price and full size of any customer limit order that improved their quoted bid or offer in a security. The proposed amendments to Article XX, Rule 7 would make Rule 7 more consistent with the limit order display requirements of SEC Rule 11Ac1–4 and Commission interpretations thereunder.[3]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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[1] 15 U.S.C. § 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1997) (''SEC Limit Order Adopting Release'').

[3] *See* letters from Richard R. Lindsey, Director, Division of Market Regulation, SEC, to Mr. Richard Grasso, Chairman and Chief Executive Officer, NYSE, dated November 22, 1996; to Mr. Richard G. Ketchum, Chief Operating Officer, NASD, dated January 3, 1997; and to Mr. James E Buck, Senior Vice President and Secretary, NYSE, dated January 17, 1997.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–97–26 and should be submitted by February 6, 1998.

**IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

The Commission believes that the Exchange's proposal to adopt a limit order display rule is consistent with the policies behind the Commission's own Limit Order Display rule.[4] The Commission recognizes that the Exchange's proposal has the additional requirements that CHX specialists display all limit orders, not just customer limit orders, unless a specified exception exists. In addition, a CHX specialist, under the Exchange's proposal, must increase the size of its quote upon receipt of a limit order even if such order creates a de minimis increase. The Commission recognized, in adopting the Limit Order Display Rule, that SRO's may impose more stringent standards.[5]

The Commission finds that the Exchange's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] which requires an exchange to have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission therefore finds good cause for approving the proposed rule change (SR–CHX–97–26) prior to the thirtieth day after date of publication of notice thereof ion the **Federal Register**.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98–1111 Filed 1–15–98; 8:45 am]

BILLING CODE 8010–01–M

[4] *See* SEC's Limit Order Adopting Release.

[5] *See* SEC's Limit Order Adopting Release at note 147.

[6] 15 U.S.C. § 78f(b)(5).

[7] 15 U.S.C. § 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–39539; File No. SR–NASD–97–92]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to By-Law Amendment to Require Members To Update Firm Contact Information Electronically, To Maintain Electronic Mail Account, and for Other Purposes

January 12, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 19, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Association is proposing the following changes to its by-laws, to require its members to update firm contact information electronically, to maintain an electronic mail (e-mail) address, and to make certain other technical changes:

**By-Laws of the National Association of Securities Dealers, Inc.[2]**

*Article IV—Executive Representative*

*Sec. 3.* Each member shall appoint and certify to the Secretary of the NASD one ''executive representative'' who shall represent, vote, and act for the member in all the affairs of the NASD, except that other executives of a member may also hold office in the NASD, serve on the Board or committees appointed under Article IX, Section 1 or otherwise take part in the affairs of the NASD. A member may change its executive representative upon giving notice thereof via electronic process or such other process the NASD may prescribe to the Secretary, or may, when necessary, appoint, by notice via electronic process to the Secretary, a substitute for its executive representative. An executive representative of a member or a substitute shall be a member of senior management and registered principal of the member. *Not later than January 1, 1999, each executive representative shall maintain an Internet electronic mail account for communication with the NASD and shall update firm contact information via the NASD Regulation Web Site or such other means as prescribed by the NASD.*

* * * * *

*Article VII—Board of Governors*

* * * * *

*Sec. 9.* (b) The National Nominating Committee shall consist of no fewer than six and no more than nine members. The number of [Industry] *Non-Industry* committee members shall equal or exceed the number of [Non-Industry] *Industry* committee members. If the National Nominating Committee consists of six members, at least two shall be Public committee members. If the National Nominating Committee consists of seven or more members, at least three shall be Public committee members. No officer or employee of the Association shall serve as a member of

[2] This version of the NASD By-Laws was approved by the Commission in Securities Exchange Act Release No. 39326 (Nov. 14, 1997), 62 FR 62385 (Nov. 21, 1997). Additions are italicized, deletions are bracketed.

the National Nominating Committee in any voting or non-voting capacity. No more than three of the National Nominating Committee members and no more than two of the Industry committee members shall be current members of the NASD Board.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

*(a) Amendment to Article IV, Section 3.* On August 5, 1997, the Membership Committee of the NASD Regulation, Inc. (''NASD Regulation'') Board of Directors recommended the adoption of an amendment to the NASD By-Laws to require each executive representative, beginning not later than January 1, 1999, to maintain an Internet electronic mail account for communication with the NASD and to update firm contact information via the NASD Regulation Web Site. The NASD Regulation Board approved the recommendation at its September 23, 1997 meeting. The NASD Board of Governors approved the amendment at its December 11, 1997 meeting.

The NASD has long wrestled with how to collect and administer in an effective manner the names of members, executive representatives and other individuals who hold positions of significant responsibility within member firms. This information is used by the NASD Corporate Secretary for member balloting. Member Regulation for compliance purposes, and Corporate Communications in identifying Key individuals for use in target mailings. The current method for acquiring this information is through the filing of an NASD form entitled ''NASD Member Firm Contact Questionnaire'' (NMFCQ).

The data requested on the NMFCQ is not required on any other form filing (*e.q.,* Form BD or U–4). The data is available in the Central Registration Depository (''CRD''), but in a text form that renders it nearly impossible to interface to another system. Thus, members are required to file the NMFCQ with the CRD, where the information is data captured into the Member Profile System, an adjunct to the existing CRD system. The data is then viewable throughout the organization via the Member Profile System and is interfaced to regulatory and finance systems as well as the existing corporate mailing system for use in distributing publications, reports, voting ballots, and mail.

A new procedure for collecting NMFCQ information in the future is necessary for two reasons. First, the CRD modernization effort does not include rebuilding this function, so another alternative is required. Second, members are rarely updating these filings. Because the information solicited via the form is very important to support the NASD's business, the NASD must have a more efficient means for firms to update this information, thereby encouraging them to do so more regularly.

The proposed By-Law change will improve the data collection process by requiring a firm to access its NMFCQ via the NASD Regulation Web Site and update it on a periodic basis. (A firm would be able to access only its own NMFCQ; the information would be password-protected to prevent any public access.) The information then would be interfaced to the internal NASD Regulation systems requiring this set of data. Further, the By-Law also would require each member to maintain an Internet electronic mail address on behalf of its executive representative. This electronic mail address would be used proactively to send messages reminding the member to review and update its contact information.

There are other reasons the staff is interested in member Internet access and electronic mail. Once established, it opens up many options for timely communications with members and associated cost savings. It also can assist members with timely internal distribution of NASD information, notices, and publications. Other potential initiatives include eliminating or reducing printed publications, sending more timely announcements and notices, and providing value-added services to members.

The NASD is proposing a one-year transition period to accommodate small firms that may not currently have Internet access or electronic mail accounts.

*(b) Technical Amendment to Article VII, Section 9(b).* The NASD also proposes a technical amendment to Article VII, Section 9(b) of the NASD By-Laws. In Special Notice to Members 97–75, the NASD proposed a comprehensive revision to its By-Laws to provide for a more streamlined corporate structure. The membership approved these changes on November 13, 1997, and the Securities and Exchange Commission (''Commission'') approved them on November 14, 1997.[3] Article VII, Section 9(b) contained a typographical error that provided that the number of Industry committee members on the National Nominating Committee should equal or exceed the number of Non-Industry committee members. The terms ''Industry'' and ''Non-Industry'' were transported. Section 9(b) should provide that the number of Non-Industry committee members should equal or exceed the number of Industry committee members. The National Nominating Committee is required to be composed in such a manner by the Undertakings agreed to by the NASD on August 8, 1996.[4]

2. Statutory Basis

The NASD believes the proposed rule change is consistent with Section 15A(b)(2) in that the proposed rule change will assist the NASD in carrying out the purposes of the Act and to enforce compliance with the Act, the rules and regulations thereunder, and the Rules of the Association.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such

[3] *See* Securities Exchange Act Release No. 39326 (Nov. 14, 1997), 62 FR 62385 (Nov. 21, 1997).

[4] Securities Exchange Act Release No. 37538 (Aug. 8, 1996) (SEC Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, In the Matter of National Association of Securities Dealers, Inc., Administrative Proceeding File No. 3–9056).

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will by order approve such proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.

The NASD proposes to make the rule change effective upon Commission approval.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–97–92 and should be submitted by February 6, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98–1110 Filed 1–15–98; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–39532; File No. SR–PCX–97–28]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Exchange-Sponsored Hand-Held Terminals for Options Floor Brokers

January 9, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 3, 1997 and December 12, 1997, respectively, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change and amendment No. 1 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt a new program to allow floor brokers on the Options Floor to use Exchange-sponsored hand-held terminals to receive orders sent electronically by Member Firms located off the floor. The proposal will also establish new procedures for electronic order flow handling, routing, execution and trade reporting under the program. The test of the proposed rule change is available at the Office of the Secretary, the Exchange and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

*General Description.* The Exchange's Member Firm Interface (''MFI'')[3] currently permits Exchange Member Firms to use an electronic link with the Exchange to send their option orders directly to the Exchange for delivery to POETS (Pacific Option Exchange Trading System).[4] Under the proposal, member firms would be able to use the MFI connection to route orders directly to the member firm booth (not by default) or to a floor broker's hand-held terminal located in the trading crowd.[5]

Under the program, Member Firms will be permitted to send their orders electronically to the Exchange via MFI and route them to one of three destinations on the trading floor: (a) To a floor broker standing in the trading crowd; (b) to a Member Firm booth location on the trading floor; or (c) to POETS, where they will be automatically executed by Auto-Ex or maintained in Auto-Book. All orders so transmitted will first be sent through the Server.[6] Orders sent to a Member Firm booth via the Server may be sent subsequently either to POETS or to a floor broker in the trading crowd. Orders sent via the Server to a floor broker in the trading crowd may subsequently be transmitted to a Member Firm booth, to POETS, or to another floor broker on the trading floor.

The Exchange intends to furnish hand-held terminals to be used by floor brokers under the program. In addition, the Exchange will supply booth devices that will have the capability to retrieve and display all orders that were submitted through the device. The Exchange intends to assess users a monthly rental fee for such use.[7]

[3] The MFI is an electronic order delivery and reporting system that allows member firms to route orders for execution by the automatic execution feature of POETS as well as to route limit orders to the Options Public Limit Order Book. Orders that do not reach those two destinations are defaulted to a member firm booth. MFI also provides member firms with instant confirmation of transactions to their systems. Member firms may access POETS by establishing an MFI mainframe-to-mainframe connection.

[4] Orders entered via MFI are delivered to one of three destinations: (a) to Auto-Ex, where they are automatically executed at the disseminated bid or offering price; (b) to Auto-Book which maintains non-marketable limit orders based on limit price and time of receipt; or (c) to a Member Firm's default destination—a particular firm booth or remote entry site—if the order fails to meet the eligibility criteria necessary for either Auto-Ex or Auto-Book or if the Member Firm requests such default for its orders. *See generally* Exchange Act Release No. 27633 (January 18, 1990), 55 FR 2466 (''POETS Approval Order'').

[5] In that regard, the Exchange is proposing to add a new Rule 6.88(a), which provides: ''Members and Member Organizations may send orders electronically through the Exchange's Member Firm Interface and route them directly to POETS, to a Member Firm booth on the Options Floor, to a Floor Broker Hand-Held Terminal located on the Options Floor, or to any other location designated by the Exchange, provided that the Member or Member Organization has been approved by the Exchange to do so.''

[6] The Exchange notes that there will be no appreciable delay in order entry due to the transmission of orders through the Server. The Exchange also notes that if a Member Firm routes an order to POETS via MFI for automatic execution or maintenance in Auto-Book, the order will not be sent through the Server. Only orders to be transmitted through the Hand-Held Terminal system will be sent through the Server.

[7] The Exchange will submit a separate rule filing to the Commission to establish these fees.

Exchange rules on order representation and order execution will generally be unchanged under the program.[8] However, the Exchange is proposing to modify its rules on orders to provide that an order sent electronically through MFI will be deemed to be a ''written order'' for purposes of Rule 6.67. The order information that must be reported to the Exchange in connection with each transaction that is executed on the trading floor will be also unchanged under the program.[9]

*Prohibition of Market Making Function.* The Exchange is proposing to adopt new Rule 6.88(b) providing that no Floor Broker may knowingly use a Floor Broker Hand-Held Terminal, on a regular and continuous basis, to simultaneously represent orders to buy and sell options contracts in the same series for the account of the same beneficial holder. The rule further provides that if the Exchange determines that a person or entity has been sending, on a regular and continuous basis, orders to simultaneously buy and sell option contracts in the same series for the account of the same beneficial holder, the Exchange may prohibit orders for the account of such person or entity from being sent through the Exchange's Member Firm Interface for such period of time as the Exchange deems appropriate.[10]

*Implementation.* The Exchange is proposing a two-phase approach to integrating the new hand-held technology into the floor environment. In Phase I, the Exchange will allow limited implementation of the program to evaluate the use of hand-held terminals and to identify and correct any problems that may arise. In this regard, the Exchange will select a representative cross-section of floor members and off-floor members for the execution of various types of order flow in both lightly-traded and heavily-traded issues. Phase I will last for about four months. It will involve approximately two off-floor Member Firms, two Member Firm booth devices and 12 floor broker hand-held terminals. The Exchange, in conjunction with its Options Floor Trading Committee, will select Members and Member Firms to participate in Phase I on an objective basis.[11] During Phase I, floor brokers will not be permitted to transmit orders to other floor brokers (they will be limited to transmitting orders either to POETS or to a Member Firm booth).

In Phase II, the Exchange will roll out the program on a floor-wide basis, allowing any qualified Floor Member or off-floor Member who wishes to participate in the program to do so.[12]

*Order Tickets.* Under the proposal, initially, floor brokers using terminals will not need to write up order tickets because the trade-related floor broker terminal information will be passed electronically to POETS and then to POPS (Pacific Options Processing Information) for clearing purposes. Yet the party on the other side of the trade, if it is executed by a market maker of a floor broker not using a terminal, will have to submit a paper order ticket to the Exchange for processing. Later, when advancements in technology allow for it, no paper tickets will be required because all market makers and floor brokers will be able to interface with each other through hand-held terminals—but that change will be the subject of another filing. With regard to proprietary hand held terminals, the order ticket requirement would be the same as with the Exchange-sponsored terminals, i.e., if the trade information is not sent to the Exchange electronically, it will have to be conveyed by means of a written order ticket.

*Clearing and Trade Reporting.* Once an order has been executed, the Hand-Held Terminal system will route trade information to POETS, which, in turn, will route the information to a computer for trade match and clearing purposes. At the same time, the Exchange will send a trade report to the Member Firm that entered the order. In addition, the Exchange will transmit trade information to OCC, OPRA and certain vendors.

*Audit Trail.* Order information sent through the Hand-Held Terminal system will become audit trail information that is available to the Exchange for regulatory purposes. However, if an order is routed to the Member Firm booth by telephone or wire, and not through MFI, and the order is then sent to POETS or to a floor broker in the crowd, the audit trail information will commence when the order is sent from the booth. An audit trail of all actions taken by the hand-held terminal that result in an interaction with the Server will be maintained. Upon receipt of an order in the Server from POETS or a booth device, the order will be time stamped and retained in the Server's database. When orders are executed at a hand-held device, they will be time stamped upon receipt by the Server. The Exchange believes that the audit trail information will be more accurate than current information, which is recorded manually on order tickets.

*System Capacity.* The Exchange believes, based upon extensive analysis and testing, that implementation of the program will not adversely affect POETS system capacity or functionality.

*Use of Other Hand-Held Terminal Devices.* The Exchange will not prohibit floor brokers from using proprietary hand-held terminals [13] for order entry on the Options Floor as long as they do not interfere with any Exchange-sponsored hand-held terminals, with POETS or with other equipment on the floor.[14]

2. Statutory Basis

The Exchange represents that the proposal is consistent with Section 6(b) of the Act,[15] in general, and Section 6(b)(5) of the Act,[16] in particular, is that it is designed to promote just and equitable principles of trade; to foster

[8] *See, e.g.,* PCX Rules 5.1(e), 6.43–6.48 and Options Floor Procedure Advices A–1–A–11 and G–1–G12.

[9] *See* PCX Rule 6.69.

[10] The Exchange notes that the Commission has previously approved rule change proposals that prohibit the use of floor-broker hand-held terminals from performing a market maker function. *See, eg.,* Securities Exchange Act Release No. 38054 (Dec. 16, 1996), 61 FR 67365 (Dec. 20, 1996) (Order Approving SR–CBOE–95–48). The PCX has filed a similar proposal, which is currently pending with the Commission. *See* Securities Exchange Act Release No. 38270 (Feb. 11, 1997), 62 FR 7286 (Feb. 18, 1997) (Notice of filing of SR–PSE–97–02).

[11] Factors will include the nature of order flow (retail or institutional), the nature of the issue (lightly-traded or heavily-traded), nature of the floor brokerage operation, time of application, limitations in the number of participants who may participate, and other such factors.

[12] The term ''qualified Floor Member or off-floor Member'' refers to the requirement that all floor brokers and order flow providers who participate in the program must be approved by the Exchange to do so. Floor brokers are eligible to participate if they are registered with the Exchange as floor brokers pursuant to Rule 6.44 and have arranged with a member firm to receive order flow through the system. Member firms are eligible to participate in the program if they have made arrangements with a floor broker for the transmission and execution of orders. Moreover, program participants will be required to pay the Exchange a fee in an amount to be specified in a rule change proposal to be filed with the Commission.

[13] The Exchange notes that a rule filing to permit Exchange floor brokers to use proprietary order routing terminals on the Options Trading Floor is currently pending before the Commission. *See* Securities Exchange Act Release No. 38270 (Feb. 11, 1997), 62 FR 7286 (Feb. 18, 1997) (Notice of filing of SR–PSE–97–02).

[14] The term ''interfere'' refers to electronic interference that may occur between a member's proprietary device and another electronic system or piece of equipment on the Trading Floor. For example, if the use of a proprietary device on the floor caused the POETS automatic execution to halt, or if it disrupted telephonic communications on the floor, or if it prevented another member firm from being able to receive electronic orders through another order-routing system, then the device causing the interference could not be used on the floor until it was rendered compatible with the order electronic systems in use.

[15] 15 U.S.C. § 78f(b).

[16] 15 U.S.C. § 78f(b)(5).

cooperation and coordination with persons engaged in regulating, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of free and open market and a national market system; to protect investors and the public interest; and is not designed to permit unfair discrimination between customer, issuers, brokers or dealers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-PCX–97–28 and should be submitted by February 6, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 98–1112 Filed 1–15–98; 8:45 am]

BILLING CODE 8010–01–M

[17] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF TRANSPORTATION

### Aviation Proceedings, Agreements Filed During the Week Ending January 9, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

*Docket Number:* OST–98–3300.

*Date Filed:* January 5, 1998.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC3 Telex Mail Vote 904, Korea-Japan/China fares, Intended effective date: February 1, 1998.

*Docket Number:* OST–98–3301.

*Date Filed:* January 5, 1998.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC1 Telex Mail Vote 905, Chile-Brazil PEX fares, Intended effective date: January 15, 1998.

*Docket Number:* OST–98–3302.

*Date Filed:* January 5, 1998.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC23 AFR–TC3 0028 dated December 5, 1997, Africa TC3 Resos r1–40, Minutes—PTC23 AFR–TC3 0029, dated December 23, 1997, Tables—PTC23 AFR–TC3 Fares 0012, dated December 19, 1997, Intended effective date: April 1, 1998.

*Docket Number:* OST–98–3315.

*Date Filed:* January 7, 1998.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC3 Telex Mail Vote 906, Japan-China fares, Intended effective date: January 15, 1998.

*Docket Number:* OST–98–3316.

*Date Filed:* January 7, 1998.

*Parties:* Members of the International Air Transport Association.

*Subject:* PSC/Reso/090 dated December 1, 1997, Finally Adopted Resolutions r1–r52, Minutes—PSC/Minutes/004 dated December 1, 1997, Intended effective date: June 1, 1998.

*Docket Number:* OST–98–3320.

*Date Filed:* January 9, 1998.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC12 NMS–ME 0036 dated December 19, 1997, r1–17, PTC12 NMS–ME 0037 dated December 19, 1997, r18–r35, Minutes—PTC NMS–ME 0035 dated December 19, 1997, Table—PTC12 NMS–ME Fares 0016 dated January 6, 1998, Intended effective date: April 1, 1998.

**Paulette V. Twine,**

*Documentary Services.*

[FR Doc. 98–1166 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Notice of Application for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending January 9, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (see 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each Application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or, in appropriate cases, a final order without further proceedings.

*Docket Number:* OST–95–495.

*Date Filed:* January 7, 1998.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* February 4, 1998.

*Description:* Amendment No. 2 to the Application of United Air Lines, Inc. pursuant to 49 U.S.C. Section 40103 and Subpart Q of the Rules (14 CFR 302.1701, *et seq.*) to realign Segment 1 of its Certificate of Public Convenience and Necessity for Route 632 by adding to the route the following coterminal points in South America: Colombia (to be substituted for Barranquilla, Colombia), Ecuador, Peru, Bolivia, and Paraguay.

**Paulette V. Twine,**

*Documentary Services.*

[FR Doc. 98–1165 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Aviation Rulemaking Advisory Committee Meeting on Aircraft Certification Procedures Issues

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of meeting cancellation.

**SUMMARY:** The FAA is issuing this notice to advise the public that the January 22 meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee, scheduled to discuss Aircraft Certification Procedures Issues (63 FR 122), has been cancelled.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angela O. Anderson, (202) 267–9681, Office of Rulemaking (ARM–200), 800 Independence Avenue, SW., Washington, DC 20591.

Issued in Washington, DC, on January 12, 1998.

**Brian Yanez,**

*Assistant Executive Director for Aircraft Certification Procedures Issues, Aviation Rulemaking Advisory Committee.*

[FR Doc. 98–1129 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Aviation Rulemaking Advisory Committee; Meeting Cancellation

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of meeting cancellation.

**SUMMARY:** The FAA is issuing this notice to advise the public that the January 22, 1998, meeting of the Aviation Rulemaking Advisory Committee (ARAC) scheduled to discuss general aviation operations issues (63 FR 122, January 2, 1998) has been cancelled.

**FOR FURTHER INFORMATION CONTACT:** Noreen Hannigan, Office of Rulemaking (ARM–106), Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591; telephone (202) 267–7476; fax (202) 267–5075.

Issued in Washington, DC, on January 13, 1998.

**Louis C. Cusimano,**

*Assistant Executive Director for General Aviation Operations, Aviation Rulemaking Advisory Committee.*

[FR Doc. 98–1223 Filed 1–14–98; 1:03 pm]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent to Rule on Application (98–06–C–00–PHL) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Philadephia International Airport, Philadelphia, PA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Correction to Notice of Intent to Rule on Application to impose and use the revenue from a Passenger Facility Charge (PFC) at Philadelphia International Airport, Philadelphia, PA.

**SUMMARY:** This notice corrects the application number which was erroneously identified as 98–05–C–00–PHL in the previously published notice.

In notice document 97–33286 beginning on page 66886 in the issue of Monday, December 22, 1997, on the second column under Notice of Intent To Rule on Application, change the number in parenthesis from 98–05C–00–PHL to 98–06–C–00–PHL. In addition on the third column last, on the paragraph, after Application number: Change from 98–05C–00–PHL to 98–06–C–00–PHL

**FOR FURTHER INFORMATION CONTACT:** Thomas Felix, Manager Planning & Programming Branch, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamacia, NY 11430.

Issued in Jamaica, NY, on January 8, 1998.

**Thomas Felix,**

*Manager, Planning & Programming Branch, Airports Division, Eastern Region.*

[FR Doc. 98–1103 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application No. 97–03–C–00–ICT To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Wichita Mid-Continent Airport, Wichita, KS

**AGENCY:** Federal Aviation Administration, (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Wichita Mid-Continent Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before February 17, 1998.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bailis F. Bell, Director of Airports, at the following address: Wichita Airport Authority, 2173 Air Cargo Road, Wichita, KS 67277–0130.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Wichita Airport Authority, under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Lorna Sandridge, PFC Program Manager, FAA, Central Region, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–4730. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Wichita Mid-Continent Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On December 23, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Wichita Airport Authority, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 25, 1998.

The following is a brief overview of the application.

*Level of the proposed PFC:* $3.00.

*Proposed charge effective date:* April 1, 1998.

*Proposed charge expiration date:* July 31, 2004.

*Total estimated PFC revenue:* $10,839,500.

*Brief description of proposed projects:* Airfield pavement program; airfield safety improvements (Phase III); terminal building modifications; and aircraft rescue and firefighting facilities improvements.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Wichita Mid-Continent Airport.

Issued in Kansas City, MO, on December 23, 1997.

**Michael J. Faltermeier,**

*Acting Manager, Airports Division, Central Region.*

[FR Doc. 98–1096 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

**[FHWA Docket No. 3240]**

## Notice of Request for Reinstatement of an Expired Information Collection; Federal Motor Carrier Safety Regulations, Accident Recordkeeping Requirements

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3051, 3506(c) (2) (A)), the FHWA is requesting public comment on its intent to ask the Office of Management and Budget (OMB) to reinstate the expired information collection that documents information on commercial motor vehicle crashes (accidents) collected and maintained by motor carriers.

**DATES:** Comments must be submitted on or before March 17, 1998.

**ADDRESSES:** Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah M. Freund, Office of Motor Carrier Research and Standards, (202) 366–4009, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Electronic Availability

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. An electronic copy of this document may be downloaded using a modem and suitable communications software from the **Federal Register** electronic bulletin board service (telephone number: 202–512–1661). Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/nara/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/su_docs.

*Title:* Accident Recordkeeping Requirements.

*OMB Number:* 2125–0526

*Background:* Title 49 of the Code of Federal Regulations, Section 390.15 of the Federal Motor Carrier Safety Regulations (FMCSRs), requires motor carriers to make all records and information pertaining to crashes (accidents) available to an authorized representative or special agent of the Federal Highway Administration (FHWA) upon request or as part of an inquiry. For the purposes of § 390.15, ''accident'' is defined as an occurrence involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in (1) A fatality; (2) bodily injury to a person who, as a result of the injury, receives medical treatment away from the scene of the accident; or (3) one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle (49 CFR 390.5). Occurrences involving only boarding and alighting from a stationary motor vehicle or involving only the loading or unloading of cargo are not included in the definition.

Motor carriers are required to maintain an accident register for one year after the date of the accident. The register must include a list of each accident. The information for each accident must include, at a minimum, the following elements: date of accident; city or town in which or most near where the accident occurred and the State in which the accident occurred; driver name; number of injuries; number of fatalities; and whether hazardous materials, other than fuel spilled from the fuel tanks of motor vehicles involved in the accident, were released. In addition, the register must contain copies of all accident reports required by State or other governmental entities or insurers.

There are no prescribed forms. The records are used by the FHWA and its representatives as a source of information for investigations or special studies, and to assess the effectiveness of motor carriers' safety management controls.

*Respondents:* Motor carriers.

*Estimated Total Annual Burden Per Record:* The FHWA estimates approximately 129,000 accidents involving trucks and 16,000 accidents involving buses as defined in Section 390.5 of the FMCSRs occur annually (source: Truck and Bus Crash Factbook, 1995). Of these, approximately 75 percent involve trucks and buses operated by interstate motor carriers. About 80 percent of the buses involved in crashes are school or transit buses and are not subject to this recordkeeping requirement. The number of accidents is therefore estimated to be $(0.75\times129{,}000)+(0.75\times0.20\times16{,}000)=99{,}150$ .

The agency estimates it takes approximately two minutes for interstate motor carriers to collect and record the seven elements of information on the accident register. Based on these assumptions, the agency estimates a time burden of 3,305 hours per year for accident report register information.

Interested parties are invited to send comments regarding any aspect of these information collections, including, but not limited to: (1) Whether the collection of information is necessary for the proper performance of the functions of the FHWA, including whether the information has practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information.

**Authority:** 49 U.S.C. 31136, 31141, and 31502 and 49 CFR 1.48.

Issued on: January 7, 1998.

**George S. Moore,**

*Associate Administrator for Administration.*

[FR Doc. 98–1130 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–22–P

## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

## Environmental Impact Statement: City of Lawrence, Douglas County, Kansas

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Intent cancellation.

**SUMMARY:** The FHWA is issuing this notice to advise the public that a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for a proposed highway project located in the City of Lawrence, Douglas County, Kansas, is cancelled. The NOI was originally published in the **Federal Register** on November 5, 1993. The cancellation is based on a decision not to proceed with the project at this time.

**FOR FURTHER INFORMATION CONTACT:** Johnny R. Dahl, P.E., Operations Engineer, FHWA, 3300 South Topeka Boulevard, Suite 1, Topeka, Kansas 66611–2237, Telephone: (785) 267–7284. Warren L. Sick, P.E., Chief of Bureau of Design, Kansas Department of Transportation (KDOT), Docking State Office Building, Topeka, Kansas 66612, Telephone: (785) 296–2270. George Williams, Director of the Department of Public Works, City of Lawrence, Box 708, Lawrence, Kansas 66044–0708, Telephone: (785) 832–3124.

**SUPPLEMENTARY INFORMATION:** The Lawrence Eastern Parkway Environmental Impact Study was initiated by the City of Lawrence in 1989. In 1997, the City elected to withdraw its support and sponsorship of the Lawrence Eastern Parkway EIS. The City has directed that their staff bring closure to the study effort. The EIS documentation compiled to date for the proposed Lawrence Eastern Parkway will become a resource document and will not be considered a completed study document. There is agreement that there will be transportation needs that warrant this improvement in the future. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA, KDOT, or the City of Lawrence at the addresses provided.

Issued on: January 9, 1998.

**David R. Geiger,**

*Division Administrator, Kansas Division, Federal Highway Administration, Topeka, Kansas.*

[FR Doc. 98–1126 Filed 1–5–98; 8:45 am]

BILLING CODE 4910–22–M

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket No. RSAC–96–1, Notice No. 8]**

### Railroad Safety Advisory Committee; Notice of Meeting

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of Railroad Safety Advisory Committee (''RSAC'') meeting.

**SUMMARY:** FRA announces the next meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The meeting will address a wide range of topics, including possible adoption of specific recommendations for regulatory action.

**DATES:** The meeting of the RSAC is scheduled to commence at 9:30 a.m. and conclude at 4:00 p.m. on Tuesday, January 27, 1998.

**ADDRESSES:** The meeting of the RSAC will be held at The Westin Hotel, 1400 M Street, NW, Washington, DC. The meeting is open to the public on a first-come, first-served basis and is accessible to individuals with disabilities. Sign language interpreters will be available for individuals with hearing impediments.

**FOR FURTHER INFORMATION CONTACT:** Vicky McCully, RSAC Coordinator, FRA, 400 7th Street, SW, Washington, DC 20590, (202) 632–3330, Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 400 7th Street, SW, Washington, DC 20590, (202) 632–3309, or Lisa Levine, Office of Chief Counsel, FRA, 400 7th Street, SW, Washington, DC 20590, (202) 632–3189.

**SUPPLEMENTARY INFORMATION:**. Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the Railroad Safety Advisory Committee (''RSAC''). The meeting is scheduled to begin at 9:30 a.m. and conclude at 4:00 p.m. on Tuesday, January 27, 1998. The meeting will be held at The Westin Hotel, 1400 M Street, NW, Washington, DC. All times noted are Eastern Standard Time.

RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The Committee consists of 48 individual representatives, drawn from among 27 organizations representing various rail industry perspectives, and 2 associate non-voting representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico. Staff of the National Transportation Safety Board and Federal Transit Administration also participate in an advisory capacity.

During this meeting, the RSAC will receive status reports, containing progress information, from the Locomotive Crashworthiness Working Group, the Locomotive Cab Working Conditions Working Group, and the Event Recorder Working Group.

In addition, the Committee will receive a status report from the recently constituted Positive Train Control (PTC) Working Group, tasked with: (1) Facilitating understanding of current PTC technologies, definitions, and capabilities; (2) addressing issues regarding the feasibility of implementing fully integrated PTC systems; and (3) facilitating implementation of software based signal and operating systems through consideration of revisions to the Rules, Standards and Instructions to address processor-based technology and communication-based architectures.

Finally, the Committee may be asked to consider for approval the Tourist and Historic Railroad working group's proposal for the revision of the steam locomotive inspection and testing standards contained in 49 CFR part 230.

Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740) for more information about the RSAC.

**George A. Gavalla,**

*Acting Associate Administrator for Safety.*

[FR Doc. 98–784 Filed 1–15–98; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. MC–F–20913]**

### Peter Pan Bus Lines, Inc.—Pooling—Greyhound Lines, Inc.

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of proposed pooling application.

**SUMMARY:** Applicants, Peter Pan Bus Lines, Inc., of Springfield, MA, and Greyhound Lines, Inc., of Dallas, TX, jointly seek approval under 49 U.S.C. 14302 of a pooling agreement to govern their motor passenger and express operations (but not the revenues earned from those operations) between Albany, NY, and Boston, MA.

**DATES:** Comments are due by February 17, 1998, and, if comments are filed, applicants' rebuttal statement is due by March 9, 1998.

**ADDRESSES:** Send an original and 10 copies of any comments referring to STB Docket No. MC-F–20913 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. Also, send one copy of comments to each of applicants' representatives: (1) Jeremy Kahn, Suite 810, 1730 Rhode Island Avenue, N.W., Washington, DC 20036; (2) Fritz R. Kahn, Suite 750 West,

1100 New York Avenue, N.W., Washington, DC 20005–3934.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

**SUPPLEMENTARY INFORMATION:** Applicants are competitors on certain intercity routes between Albany, NY, and Boston, MA. They seek to pool portions of their passenger and express services over routes which they both operate.[1] They will not, however, share the revenues derived from their operations over these routes.[2] Applicants state that their services between these points overlap and that excess schedules are operated because of the need to protect their respective market shares. According to applicants, this has resulted in unacceptably low load factors, an over-served market, and inefficient operations.

Applicants submit that the pooling agreement will allow them to reduce excess bus capacity, cement their business relationship, and allow them to share in the financial vicissitudes of the pooled-route operations. They claim public benefits that will include: (1) rationalization of schedules, eliminating some duplicative departures while adding some departures at other times of the day, resulting in more frequent bus service over a broader time period; (2) consolidation of terminals and coordination of ticketing at Boston, MA, Newton, MA, Worcester, MA, Springfield, MA, and Albany, NY, resulting in greater flexibility for passengers to use buses, tickets, and terminals; (3) capital improvements; and (4) continued bus service by more sound and financially stable carriers. In addition, they assert that approval of the pooling agreement will not significantly affect either the quality of the human environment or the conservation of energy resources. Rather, they claim that the reduction in the number of schedules each carrier operates will result in a salutary effect on the environment.

Applicants state that competition will not be unreasonably restrained. They argue that: (1) the pooled service is subject to substantial intermodal competitive pressure from Amtrak, the airlines, and private automobiles; and (2) other motor passenger carriers may easily enter and compete in the market.

Copies of the application may be obtained free of charge by contacting applicants' representatives. A copy of this notice will be served on the Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530.

Decided: January 7, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 98–1117 Filed 1–15–98; 8:45 am]

**BILLING CODE 4915–00–P**

[1] Applicants have already received authority to pool their operations and revenues for their motor passenger and express transportation service between Philadelphia, PA, and New York, NY, in *Peter Pan Bus Lines, Inc.—Pooling—Greyhound Lines, Inc.*, STB Docket No. MC-F–20904 (STB served June 30, 1997). A similar request involving operations between New York City and Washington, DC, is pending in *Peter Pan Bus Lines, Inc.—Pooling—Greyhound Lines, Inc.*, STB Docket No. MC-F–20908. A third request involving operations between Boston and New York City, and between Springfield, MA, and New York City, is also pending in *Peter Pan Bus Lines, Inc.—Pooling—Greyhound Lines, Inc.*, STB Docket No. MC-F–20912. According to applicants, the instant application is a logical extension of their other pooling agreements. Applicants state that they consider the four agreements to be interrelated and intend to implement them simultaneously after approval by the Board. We note that the United States Department of Justice, Antitrust Division, has filed comments in STB Docket No. MC-F–20908, recommending that the Board find that there is a substantial likelihood that the proposed pooling of operations between New York City and Washington would unduly restrain competition.

[2] Applicants state that each bus line will set its own passenger fares and express rates, and each will retain its individual revenues from operations on the pooled routes.

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 33533]**

### Illinois Central Railroad Company and New Orleans Public Belt Railroad—Joint Relocation Project Exemption—in New Orleans, LA

On December 23, 1997, Illinois Central Railroad Company (IC) and New Orleans Public Belt Railroad (NOPB) jointly filed a notice of exemption under 49 CFR 1180.2(d)(5) to reconfigure IC and NOPB operations over their adjacent track. The proposed transaction was scheduled to be consummated on or after the December 30, 1997 effective date of the exemption.

IC is a Class I railroad operating approximately 2,600 miles of rail line in six states, and NOPB is a Class III terminal switching railroad owned by the City of New Orleans, LA. NOPB operates approximately 25 miles of rail line in and around New Orleans.

Within the City of New Orleans, IC and NOPB own and operate adjacent mainlines. Under the joint project, IC and NOPB propose the following transactions: (1) NOPB will grant IC non-exclusive bridge trackage rights over 3.4 miles of NOPB's Main Line and Siding Track between milepost JO.3, at Lampert Junction, and milepost 3.4, at Nashville Avenue;[1] (2) IC will relocate its operation to NOPB trackage and will abandon its adjacent Main Line trackage between milepost 917.77, at Nashville Avenue, and milepost 921.13, at Lampert Junction, a distance of approximately 3.36 miles; (3) IC will grant NOPB non-exclusive bridge trackage rights over approximately 5,568 feet of IC's Main Line from Station 120+00.00, at Nashville Avenue, to Station 175+68.09, at Valence Street; and (4) IC and NOPB will perform such incidental relocation of signals and power switches as necessary to complete the proposed reconfiguration of operations contemplated by the exemption.

The transaction will simplify rail operations in the area and will reduce the number of unnecessary tracks on street right-of-way and reduce the number of tracks in grade crossings in the area. The joint project will not change service to shippers, expand the operations of IC or NOPB into new territory, or alter the existing competitive situation.

The Board will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into new territory. *See City of Detroit* v. *Canadian National Ry. Co., et al.,* 9 I.C.C.2d 1208 (1993), *aff'd sub nom., Detroit/Wayne County Port Authority* v. *ICC,* 59 F.3d 1314 (D.C. Cir. 1995). Line relocation projects may embrace trackage rights transactions such as the one involved here. *See D.T.&I.R.—Trackage Rights,* 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the

[1] IC will continue to serve the Sewerage and Water Board track near Oak Street.

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. 33533, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on (1) Anne E. Keating, Esq., Illinois Central Railroad Company, 455 North Cityfront Plaza Drive, Chicago, IL 60611–5504, and (2) A. J. Waechter, Esq., Jones, Walker, Waechter, Portevent, Carrere and Denegre, 202 St. Charles Avenue, 50th Floor, New Orleans, LA 70170–5100.

Decided: January 9, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 98–1118 Filed 1–15–98; 8:45 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 33535]**

### Maumee & Western Railroad Corporation—Operation Exemption—Maumee & Western, L.L.C.

Maumee & Western Railroad Corporation, a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire operating rights over a line of railroad owned by Maumee & Western, L.L.C., from Liberty Center, OH (milepost TN–28.0), to Woodburn, IN (milepost 79.0), a distance of approximately 51 route miles.

The transaction was scheduled to be consummated on or after December 31, 1997.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding 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. 33535, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Richard R. Wilson, Esq., 1126 Eighth Avenue, Suite 403, Altoona, PA 16602.

Decided: January 7, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 98–1067 Filed 1–15–98; 8:45 am]

BILLING CODE 4915–00–P

**FR–4915–00–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 33449]**

### Union Pacific Railroad Company—Trackage Rights Exemption—Southern Pacific Transportation Company

Southern Pacific Transportation Company (SP) has agreed to grant overhead trackage rights to Union Pacific Transportation Company (UP) over SP's tracks known as the Bakersfield Line from milepost 479.1 near Keenbrook to milepost 481.0 near Dike, a distance of 1.9 miles, in the vicinity of Los Angeles, CA. [1]

The transaction was expected to be consummated on or as soon as possible after January 7, 1998, the effective date of the exemption.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).*

This notice is filed under 49 CFR 1180.2(d)(7). 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. 33449, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Joseph D. Anthofer, General Attorney, 1416 Dodge Street, #830, Omaha, NE 19381–0796.

Decided: January 7, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 98–1069 Filed 1–15–98; 8:45 am]

BILLING CODE 4915–00–P

[1] UP states that it filed this notice of exemption to extend the trackage rights it received from SP in STB Finance Docket No. 33128 (STB served Oct. 8, 1996), which included, among others, the Bakersfield Line between Dike (MP 481.0) and West Colton (MP 494.2).

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 33536]**

### Wabash Central Railroad Corporation—Operation Exemption—Wabash Central, L.L.C.

Wabash Central Railroad Corporation, a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire operating rights over a line of railroad owned by Wabash Central, L.L.C., from Craigsville, IN (milepost 117.8), to Van Buren, IN (milepost 108.6), a distance of approximately 26.4 miles of rail line and incidental trackage rights.

The transaction was scheduled to be consummated on or after December 31, 1997.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding 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. 33536, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Richard R. Wilson, Esq., 1126 Eighth Avenue, Suite 403, Altoona, PA 16602.

Decided: January 7, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 98–1068 Filed 1–15–98; 8:45 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–32 (Sub–No. 83)] and [STB Docket No. AB–355 (Sub-No. 23)]**

### Boston and Maine Corporation—Abandonment and Springfield Terminal Railway Company—Discontinuance of Service—in Hartford and New Haven Counties, CT

On December 29, 1997, the Boston and Maine Corporation (B&M) and Springfield Terminal Railway Company (ST) (referred to collectively as applicants) filed with the Surface Transportation Board (Board), Washington, DC 20423, an application for permission for B&M to abandon and ST to discontinue service on a line of railroad known as the Canal Branch extending from milepost 14.50 in Cheshire, CT, to milepost 24.00 in Southington, CT, a distance of approximately 9.50 miles, in Hartford and New Haven Counties, CT. The line traverses U.S. Postal Service ZIP Codes 06410, 06467, 06479, and 06489. Applicants have indicated that there are no agency stations located on the line.

The line does not contain federally granted rights-of-way. Any documentation in B&M's possession will be made available promptly to those requesting it. The applicants' entire case for abandonment and discontinuance was filed with the application.

The line of railroad has appeared on B&M's system diagram map or has been included in its narrative in category 1 since February 28, 1997.

The interest of railroad employees will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

Any interested person may file with the Board written comments concerning the proposed abandonment and discontinuance or protests (including the protestant's entire opposition case), by February 12, 1998. All interested persons should be aware that following any 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 U.S.C. 10905 (49 CFR 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. 1247(d) (49 CFR 1152.29 of the Board's rules) must be filed by February 12, 1998. Persons who may oppose the abandonment or discontinuance but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence should file comments. Persons interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment or discontinuance that do wish to participate actively and fully in the process should file a protest.

In addition, a commenting party or protestant may provide:

(i) An offer of financial assistance, pursuant to 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board, whichever occurs sooner);

(ii) Recommended provisions for protection of the interests of employees;

(iii) A request for a public use condition under 49 U.S.C. 10905; and

(iv) A statement pertaining to prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29.

Parties seeking information concerning the filing of protests should refer to 49 CFR 1152.25.

Written comments and protests, including all requests for public use and trail use conditions, must indicate the proceeding designation STB Nos. AB–32 (Sub-No. 83) and AB–355 (Sub-No. 23) and should be filed with the Secretary, Surface Transportation Board, Washington, DC 20423, no later than February 12, 1998. Interested persons may file a written comment or protest with the Board to become a party to this proceeding. A copy of each written comment or protest shall be served upon the applicants' representative, John R. Nadolny, General Counsel, Law Department, Boston and Maine Corporation, Iron Horse Park, N. Billerica, MA 01862. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the proceeding. 49 CFR 1104.12(a).

The line sought to be abandoned and discontinued will be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment and discontinuance, in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicants will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The carriers' representative to whom inquiries may be made concerning sale or subsidy terms is set forth above.

Persons seeking further information concerning abandonment procedures may contact the Board 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).

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. Any other persons who would like to obtain a copy of the EA (or EIS) may contact SEA. EAs in abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Decided: January 12, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 98–1119 Filed 1–15–98; 8:45 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF THE TREASURY

### Departmental Offices; Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. § 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, N.W., Washington, D.C., on February 3, 1998, of the following debt management advisory committee:

The Bond Market Association
Treasury Borrowing Advisory Committee

The agenda for the meeting provides for a technical background briefing by Treasury staff, followed by a charge by the Secretary of the Treasury or his designate that the committee discuss particular issues, and a working session. Following the working session, the committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 9:30 a.m. Eastern time and will be open to the public. The remaining sessions and the committee's reporting session will be closed to the

public, pursuant to 5 U.S.C. App. § 10(d).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. § 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. § 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. § 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. § 552b(c)(9)(A).

The Office of the Assistant Secretary for Financial Markets is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. § 552b.

**Gary Gensler,**

*Assistant Secretary (Financial Markets).*

[FR Doc. 98–736 Filed 1–15–98; 8:45 am]

BILLING CODE 4810–25–M

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8800

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8800, Application for Additional Extension of Time To File U.S. Return for a Partnership, REMIC, or for Certain Trusts.

**DATES:** Written comments should be received on or before March 17, 1998 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Application for Additional Extension of Time To File U.S. Return for a Partnership, REMIC, or for Certain Trusts.

*OMB Number:* 1545–1057

*Form Number:* 8800

*Abstract:* Form 8800 is used by partnerships, REMICs, and by certain trusts to request an additional extension of time (up to 3 months) to file Form 1065, Form 1041, or Form 1066. Form 8800 contains data needed by the IRS to determine whether or not a taxpayer qualifies for such an extension.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and farms.

*Estimated Number of Respondents:* 20,000

*Estimated Time Per Respondent:* 13 min.

*Estimated Total Annual Burden Hours:* 4,210

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 8, 1998.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 98–1079 Filed 1–15–98; 8:45 am]

BILLING CODE 4830–01–U

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Forms 8038, 8038–G, and 8038–GC

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning Forms 8038, Information Return for Tax-Exempt Private Activity Bond Issues, 8083–G, Information Return for Tax-Exempt Governmental Obligations, and 8038–GC, Information Return for Small Tax-Exempt Governmental Bond Issues, Leases, and Installment Sales.

**DATES:** Written comments should be received on or before March 17, 1998 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Information Return for Tax-Exempt Private Activity Bond Issues (Form 8038), Information Return for Tax-Exempt Governmental Obligations (Form 8038–G), and Information Return for Small Tax-Exempt Governmental Bond Issues, Leases and Installment Sales (Form 8038–GC).

*OMB Number:* 1545–0720.

*Form Number:* 8038, 8038–G, and 8038–GC.

*Abstract:* Issuers of state or local bonds must comply with certain information reporting requirements contained in Internal Revenue Code section 149 to qualify for tax exemption. The information must be reported by the issuers about bonds issued by them during each preceding calendar quarter. Forms 8038, 8038–G, and 8038–GC are used to provide the IRS with the information required by Code section 149 and to monitor the requirements of Code sections 141 through 150.

*Current Actions:* There are no changes being made to the forms at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* State, local or tribal governments and not-for-profit institutions.

*Estimated Number of Respondents:* 14,500.

*Estimated Time Per Respondent:* 59 hr., 7 min.

*Estimated Total Annual Burden Hours:* 857,140.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 8, 1998.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 98–1080 Filed 1–15–98; 8:45 am]

BILLING CODE 4830–01–U

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 1024

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1024, Application for Recognition of Exemption Under Section 501(a).

**DATES:** Written comments should be received on or before March 17, 1998 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Application for Recognition of Exemption Under Section 501(a).

*OMB Number:* 1545–0057.

*Form Number:* 1024.

*Abstract:* Organizations seeking exemption from Federal income tax under Internal Revenue Code section 501(a) as an organization described in most paragraphs of section 501(c) must use Form 1024 to apply for exemption. The information collected is used to determine whether the organization qualifies for tax-exempt status.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Not-for-profit institutions.

*Estimated Number of Respondents:* 4,718.

*Estimated Time Per Respondent:* 61 hr., 32 min.

*Estimated Total Annual Burden Hours:* 290,290.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 9, 1998.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 98–1081 Filed 1–15–98; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 1998 Electronic Filing: Low-Income Housing Credit Forms

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Low-Income Housing Credit forms.

**SUMMARY:** The Internal Revenue Service is planning to conduct an automated pilot program during 1998 for filing Low-Income Housing Credit forms to be filed electronically (via modem to modem). This pilot program will be available without geographic limitation, although all processing is centralized at the Internal Revenue Service Center in Philadelphia, Pennsylvania. Participants must have secured prior authorization from the Internal Revenue Service. Interested parties can obtain information by writing or calling the IRS. Comments on the program are welcome.

**DATES:** Application can be submitted year round.

**ADDRESSES:** Internal Revenue Service, Philadelphia Service Center, Magnetic Media Project Office, D.P. 115, 11601 Roosevelt Blvd., Philadelphia, PA 19154. Telephone: (800) 829–6945 or (215) 516–7533 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The IRS is receiving an increasing number of computer-prepared forms, and is exploring methods to use the flexibility provided by computer preparation to achieve processing efficiencies. Electronic filing eliminates most of the manual processes required by IRS to handle paper documents, which will increase the quality of the final product, speed up the processing and reduce unnecessary correspondence.

Generally, the procedures for electronic filing will require all the data currently supplied on the paper form including attachments which usually accompany the form. Additionally, filers will be required to test before acceptance into the program. The LIHC pilot program is being offered to State Housing Agencies and software developers.

**Joseph H. Cloonan,**

*Director, Philadelphia Service Center.*

[FR Doc. 98–1078 Filed 1–15–98; 8:45 am]

BILLING CODE 4830–01–U

## UNITED STATES INFORMATION AGENCY

### U.S. Advisory Commission on Public Diplomacy meeting; Notice

**SUMMARY:** The U.S. Advisory Commission on Public Diplomacy will meet on January 21 in Room 600, 301 4th Street, S.W., Washington, D.C., from 10:00 a.m. to 11:00 a.m.

The Commission will meet with Mr. Kevin Klose, Director, International Bureau of Broadcasting, to discuss television policies, programs, and potential in U.S. international broadcasting.

**FOR FURTHER INFORMATION:** Please call Betty Hayes, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: January 13, 1998.

**Rose Royal,**

*Management Analyst, Federal Register Liaison.*

[FR Doc. 98–1149 Filed 1–15–98; 8:45 am]

BILLING CODE 8230–01–M

# Corrections

**Federal Register**

Vol. 63, No. 11

Friday, January 16, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### Title I, P.L. 480 Agreements With the Private Trade

*Correction*

In notice document 97–31480 beginning on page 63694, in the issue of Tuesday, December 2, 1997, make the following correction:

On page 63694, in the second column, in the **DATES** section, in the second line, ''February 2, 1997'' should read ''February 2, 1998''.

BILLING CODE 1505-01-D

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 226

**[Regulation Z; Docket No. R-0960]**

### Truth in Lending

*Correction*

In rule document 97–31087 beginning on page 63441, in the issue of Monday, December 1, 1997, make the following correction:

**Appendix H to Part 226 [Corrected]**

On page 63444, in the third column, in appendix H to part 226, the heading ''*Example*'' should read ''[*Example*''.

BILLING CODE 1505-01-D

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 513 and 602

**[TD 8734]**

**RIN 1545-AU43; 1545-AT77**

### General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds, and Credits; Revision of Information Reporting and Backup Withholding Regulations; and Removal of Regulations Under Part 35a and of Certain Regulations Under Income Tax Treaties

*Correction*

In rule document 97–25998, beginning on page 53387, in the issue of Tuesday, October 14, 1997, make the following correction:

**§ 513.2 [Corrected]**

1. On page 53497, in the first column, in § 513.2, in the fifth line, ''does'' should read ''does not''.

**§ 602.101 [Corrected]**

2. On page 53498, in the second column, in § 602.101(c), in the last table, in the third line, ''11.1441–8'' should read ''1.1441–8''.

BILLING CODE 1505-01-D

federal register

Friday
January 16, 1998

# Part II

# Environmental Protection Agency

**40 CFR Part 81**

**Identification of Ozone Areas Attaining the 1-Hour Standard and to Which the 1-Hour Standard is No Longer Applicable; Final and Proposed Rules**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 81**

**[FRL–5945–7]**

## Identification of Ozone Areas Attaining the 1-Hour Standard and to Which the 1-Hour Standard Is No Longer Applicable

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is taking action today to identify ozone areas where the 1-hour standard is no longer applicable. Therefore, the 40 CFR part 81 for ozone is being amended to reflect such changes. Today's regulation is being published in direct response to the President's memorandum of July 16, 1997. The President's memo directed EPA to publish within 90 days an action identifying ozone areas to which the 1-hour standard will cease to apply because they have not measured a current violation of the 1-hour standard. For all other areas, the 1-hour standard will continue to apply. Furthermore, this action is being done to assist in the phasing-out of the 1-hour standard since the recently promulgated new 8-hour standard is now in effect and is more protective of public health than the 1-hour ozone standard. The goal is to move toward implementation of the new 8-hour standard. Following today's action, the Agency intends to publish, in early 1998, a subsequent document which takes similar action to revoke the 1-hour standard in additional areas that have air quality that does not violate the 1-hour standard. Furthermore, the Agency will publish, on an annual basis, similar actions identifying areas where the 1-hour standard is no longer applicable.

**DATES:** This regulation will become effective on March 17, 1998 unless adverse comments are received during the public comment period. Written comments on this rulemaking must be limited to addressing the technical correctness of these determinations. All comments must be received on or before February 17, 1998. If adverse comments are timely received on any provision of the direct final rule, that provision will be withdrawn and only those provisions on which no such adverse comments are received will become effective on March 17, 1998.

**ADDRESSES:** Documents relevant to this rulemaking are available for inspection at the Air and Radiation Docket and Information Center (6101), Attention: Docket No. A–97–42, U.S. Environmental Protection Agency, 401 M Street SW, Room M-1500, Washington, DC 20460, telephone (202) 260–7548, between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Comments and data may also be submitted electronically by following the instructions under **SUPPLEMENTARY INFORMATION** of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning this notice should be addressed to Annie Nikbakht (policy) or Barry Gilbert (air quality data), Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Ozone Policy and Strategies Group, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5246/5238. In addition, the following Regional Contacts may be called for individual information regarding monitoring data and policy matters specific for each Regional Office's geographic area:

Region I—Richard P. Burkhart, (617) 565–3578
Region II—Ray Werner, (212) 637–3706
Region III—Marcia Spink, (215) 566–2104
Region IV—Kay Prince, (404) 562–9026
Region V—Todd Nettesheim, (312) 353–9153
Region VI—Lt. Mick Cote, (214) 665–7219
Region VII—Royan Teter, (913) 551–7609
Region VIII—Tim Russ, (303) 312–6479
Region IX—Morris Goldberg,(AIR 7), (415) 744–1296
Region X—William Puckett, (206) 553–1702

**SUPPLEMENTARY INFORMATION:** *Electronic Availability*—The official record for this rulemaking, as well as the public version, has been established under docket number A–97–42 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in **ADDRESSES** at the beginning of this document. Electronic comments can be sent directly to EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–97–42. Electronic comments on this direct final rule may be filed online at many Federal Depository Libraries.

If adverse comments are timely received on any provision of this direct final rule, all such comments will be addressed in a subsequent final rule based on those provisions of the proposed rule contained in the Proposed Rules Section of this **Federal Register** that is identical to this direct final rule. Such provisions will be withdrawn from the Direct Final Rule.

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## I. Background

On November 6, 1991, the Agency issued a rulemaking (56 FR 56694) which set forth the attainment status, including designations and classifications, for selected areas affected by ozone, carbon monoxide, particulate matter, and lead national ambient air quality standards (NAAQS). That rulemaking established on a State-by-State, pollutant-by-pollutant basis, the attainment status of the above-mentioned NAAQS. Such air quality data used in the determinations for the rulemaking were submitted by the appropriate States; the data were approved and the areas were then designated and classified by the EPA. Subsequent to the November 6, 1991 action, on November 30, 1992, the Agency issued corrections (57 FR 56762) to the tables for some of the designations, boundaries, and classifications as provided for under section 110(k)(6) of the Clean Air Act (CAA).

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 promulgate a redesignation of a nonattainment area to attainment if certain criteria are met. Such has been the case for several ozone nonattainment areas which have been redesignated to attainment over the

course of years following the CAA Amendments of 1990. The Agency has promulgated these redesignations to attainment in the **Federal Register** and thus has amended 40 CFR parts 52 and 81 accordingly.

On July 16, 1997, the President issued a memorandum (62 FR 38421, July 18, 1997) to the Administrator of the EPA which indicates that within 90 days of promulgation of the new 8-hour standard, the EPA will publish an action identifying ozone areas to which the 1-hour standard will cease to apply. The memorandum states that for areas where the air quality does not currently attain the 1-hour standard, the 1-hour standard will continue in effect. The provisions of subpart 2 of title I of the CAA would also apply to currently designated nonattainment areas until such time as each area has air quality meeting the 1-hour standard.

On July 18, 1997 (62 FR 38856), EPA promulgated a regulation replacing the 1-hour ozone standard with an 8-hour standard at a level of 0.08 parts per million (ppm). The form of the 8-hour standard is based on the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area. The new primary standard which became effective on September 16, 1997 will provide increased protection to the public, especially children and other at-risk populations. On July 18, 1997, EPA also announced that revocation of the 1-hour ozone NAAQS would be delayed until areas achieved attainment of the 1-hour NAAQS. This was done in order to facilitate continuity in public health protection during the transition to the new NAAQS.

## II. Summary of Today's Action

The purpose of this document is to revoke the 1-hour standard in those areas that EPA has determined are not violating the 1-hour standard. For all other areas the 1-hour standard will continue in effect. The purpose of retaining the current standard for such areas is to ensure a smooth transition to the new standard. When the areas not meeting the 1-hour standard have air quality that meets the 1-hour standard, as determined by EPA, then the Agency will likewise revoke the 1-hour standard for such areas.

In the immediate future, the Agency intends to issue guidance regarding the regulatory implications of today's action (revoking the 1-hour standard) as related to those areas where the 1-hour standard is no longer applicable.

## III. Analysis of Air Quality Data

This action, revoking the 1-hour standard in selected areas, is based upon analysis of quality-assured, ambient air quality monitoring data showing no violations of the 1-hour ozone standard. The method for determining attainment of the ozone NAAQS is contained in 40 CFR part 50.9 and Appendix H to that section. The level of the 1-hour primary and secondary NAAQS for ozone is 0.12 ppm.

The 1-hour standard no longer applies to an area once EPA determines that the area has air quality not violating the 1-hour standard. Determinations for this notice were based upon the most recent data available, generally 1994-1996 data. The Agency did use 1997 air quality data where violations were documented during the early portion of the 1997 ozone season. In order to revoke the 1-hour standard based upon 1995–1997 air quality data, measurements encompassing the complete ozone season would need to be available and examined. Therefore, after today's action, the Agency intends to publish, in early 1998, a subsequent notice which takes similar action to revoke the 1-hour standard in additional areas that have air quality data for 1995–1997 that do not violate the 1-hour standard. Detailed air quality data information used for today's determinations is contained in the Technical Support Document (TSD) to Docket No. A–97–42.

## IV. Tables

The ozone tables codified in today's action are significantly different from the tables now included in 40 CFR part 81. The current 40 CFR part 81 designation listings (revised as of November 6, 1991) include, by State and NAAQS pollutant, a brief description of areas within the State and their respective designation. Today's action includes completely new tables for ozone which indicate areas where the 1-hour standard no longer applies, as well as where the 1-hour standard remains in effect.

## V. Other Regulatory Requirements

### *A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

### *B. Regulatory Flexibility Act*

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

### *C. 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 private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

### *D. Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### *E. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 18, 1998. Filing a petition for reconsideration by the

Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

**List of Subjects in 40 CFR Part 81**

Air pollution control, National parks, Wilderness areas.

Dated: December 29, 1997.

**Carol M. Browner,**

*Administrator.*

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

## PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

2. In § 81.301, the table entitled ''Alabama—Ozone'' is revised to read as follows:

**§ 81.301 Alabama.**

* * * * *

ALABAMA—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Birmingham Area: | | | | |
| Jefferson County | 11/15/90 | Nonattainment | 11/15/90 | Marginal. |
| Shelby County | 11/15/90 | Nonattainment | 11/15/90 | Marginal. |
| Rest of State | | 1 hr. std. N.A.[2] | | |
| Autauga County | | | | |
| Baldwin County | | | | |
| Barbour County | | | | |
| Bibb County | | | | |
| Blount County | | | | |
| Bullock County | | | | |
| Butler County | | | | |
| Calhoun County | | | | |
| Chambers County | | | | |
| Chilton County | | | | |
| Choctaw County | | | | |
| Clarke County | | | | |
| Clay County | | | | |
| Cleburne County | | | | |
| Coffee County | | | | |
| Colbert County | | | | |
| Conecuh County | | | | |
| Coosa County | | | | |
| Covington County | | | | |
| Crenshaw County | | | | |
| Cullman County | | | | |
| Dale County | | | | |
| Dallas County | | | | |
| De Kalb County | | | | |
| Elmore County | | | | |
| Escambia County | | | | |
| Etowah County | | | | |
| Fayette County | | | | |
| Franklin County | | | | |
| Geneva County | | | | |
| Greene County | | | | |
| Hale County | | | | |
| Henry County | | | | |
| Houston County | | | | |
| Jackson County | | | | |
| Lamar County | | | | |
| Lauderdale County | | | | |
| Lawrence County | | | | |
| Lee County | | | | |
| Limestone County | | | | |
| Lowndes County | | | | |
| Macon County | | | | |
| Madison County | | | | |
| Marengo County | | | | |
| Marion County | | | | |
| Marshall County | | | | |
| Mobile County | | | | |

ALABAMA—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Monroe County | | | | |
| Montgomery County | | | | |
| Morgan County | | | | |
| Perry County | | | | |
| Pickens County | | | | |
| Pike County | | | | |
| Randolph County | | | | |
| Russell County | | | | |
| St. Clair County | | | | |
| Sumter County | | | | |
| Talladega County | | | | |
| Tallapoosa County | | | | |
| Tuscaloosa County | | | | |
| Walker County | | | | |
| Washington County | | | | |
| Wilcox County | | | | |
| Winston County | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * * * *

3. In § 81.302, the table entitled ''Alaska—Ozone'' is revised to read as follows:

**§ 81.302 Alaska.**

* * * * * * *

ALASKA—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type [2] | Date [1] | Type [2] |
| AQCR 08 Cook Inlet Intrastate | | 1 hr. std. N.A.[2] | | |
| Anchorage Election District | | | | |
| Kenai Penninsula Election District | | | | |
| Matanuska-Susitna Election District | | | | |
| Seward Election District | | | | |
| AQCR 09 Northern Alaska Intrastate | | 1 hr. std. N.A.[2] | | |
| Barrow Election District | | | | |
| Fairbanks Election District | | | | |
| Kobuk Election District | | | | |
| Nome Election District | | | | |
| North Slope Election District | | | | |
| Northwest Arctic Borough | | | | |
| Southeast Fairbanks Election District | | | | |
| Upper Yukon Election District | | | | |
| Yukon-Koyukuk Election District | | | | |
| AQCR 10 South Central Alaska Intrastate | | 1 hr. std. N.A.[2] | | |
| Aleutian Islands Election District | | | | |
| Aleutians East Borough | | | | |
| Aleutians West Census | | | | |
| Bethel Election District | | | | |
| Bristol Bay Borough Election District | | | | |
| Bristol Bay Election District | | | | |
| Cordova-McCarthy Election District | | | | |
| Dillingham Election District | | | | |
| Kodiak Island Election District | | | | |
| Kuskokwim Election District | | | | |
| Valdez-Cordova Election District | | | | |
| Wade Hampton Election District | | | | |
| AQCR 11 Southeastern Alaska Intrastate | | 1 hr. std. N.A.[2] | | |
| Angoon Election District | | | | |
| Haines Election District | | | | |
| Juneau Election District | | | | |
| Ketchikan Election District | | | | |
| Outer Ketchikan Election District | | | | |
| Prince Of Wales Election District | | | | |
| Sitka Election District | | | | |

ALASKA—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type [2] | Date [1] | Type [2] |
| Skagway-Yakutat Election District<br>Wrangell-Petersburg Election District | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * * * *

4. In § 81.303, the table entitled ''Arizona—Ozone'' is revised to read as follows:

**§ 81.303 Arizona.**

* * * * * * *

ARIZONA-OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Phoenix Area: | | | | |
| Maricopa County (part) ..... | 11/15/90 | Nonattainment ..... | 12/08/97 | Serious. |
| The Urban Planning Area of the Maricopa Association of Governments is bounded as follows: | | | | |
| 1. Commencing at a point which is at the intersection of the eastern line of Range 7 East, Gila and Salt River Baseline and Meridian, and the southern line of Township 2 South, said point is the southeastern corner of the Maricopa Association of Governments Urban Planning Area, which is the point of beginning; | | | | |
| 2. thence, proceed northerly along the eastern line of Range 7 East, which is the common boundary between Maricopa and Pinal Counties, as described in Arizona Revised Statute Section 11–109, to a point where the eastern line of Range 7 East intersects the northern line of Township 1 North, said point is also the intersection of the Maricopa County Line and the Tonto National Forest Boundary, as established by Executive Order 869 dated July 1, 1908, as amended and shown on the U.S. Forest Service 1969 Planimetric Maps; | | | | |
| 3. thence, westerly along the northern line of Township 1 North to approximately the southwest corner of the southeast quarter of Section 35, Township 2 North, Range 7 East, said point being the boundary of the Tonto National Forest and Usery Mountain Semi- Regional Park; | | | | |
| 4. thence, northerly along the Tonto National Forest Boundary, which is generally the western line of the east half of Sections 26 and 35 of Township 2 North, Range 7 East, to a point which is where the quarter section line intersects with the northern line of Section 26, Township 2 North, Range 7 East, said point also being the northeast corner of the Usery Mountain Semi-Regional Park; | | | | |
| 5. thence, westerly along the Tonto National Forest Boundary, which is generally the south line of Sections 19, 20, 21 and 22 and the southern line of the west half of Section 23, Township 2 North, Range 7 East, to a point which is the southwest corner of Section 19, Township 2 North, Range 7 East; | | | | |
| 6. thence, northerly along the Tonto National Forest Boundary to a point where the Tonto National Forest Boundary intersects with the eastern boundary of the Salt River Indian Reservation, generally described as the center line of the Salt River Channel; | | | | |

ARIZONA-OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| 7. thence, northeasterly and northerly along the common boundary of the Tonto National Forest and the Salt River Indian Reservation to a point which is the northeast corner of the Salt River Indian Reservation, and the southeast corner of the Fort McDowell Indian Reservation, as shown on the plat dated July 22, 1902, and recorded with the U.S. Government on June 15, 1902; | | | | |
| 8. thence, northeasterly along the common boundary between the Tonto National Forest and the Fort McDowell Indian Reservation to a point which is the northeast corner of the Fort McDowell Indian Reservation; | | | | |
| 9. thence, southwesterly along the northern boundary of the Fort McDowell Indian Reservation, which line is a common boundary with the Tonto National Forest, to a point where the boundary intersects with the eastern line of Section 12, Township 4 North, Range 6 East; | | | | |
| 10. thence, northerly along the eastern line of Range 6 East to a point where the eastern line of Range 6 East intersects with the southern line of Township 5 North, said line is the boundary between the Tonto National Forest and the east boundary of the McDowell Mountain Regional Park; | | | | |
| 11. thence, westerly along the southern line of Township 5 North to a point where the southern line intersects with the eastern line of Range 5 East which line is the boundary of Tonto National Forest and the north boundary of McDowell Mountain Regional Park; | | | | |
| 12. thence, northerly along the eastern line of Range 5 East to a point where the eastern line of Range 5 East intersects with the northern line of Township 5 North, which line is the boundary of the Tonto National Forest; | | | | |
| 13. thence, westerly along the northern line of Township 5 North to a point where the northern line of Township 5 North intersects with the easterly line of Range 4 East, said line is the boundary of the Tonto National Forest; | | | | |
| 14. thence, northerly along the eastern line of Range 4 East to a point where the eastern line of Range 4 East intersects with the northern line of Township 6 North, which line is the boundary of the Tonto National Forest; | | | | |
| 15. thence, westerly along the northern line of Township 6 North to a point of intersection with the Maricopa-Yavapai County line, which is generally described in Arizona Revised Statute Section 11–109 as the center line of the Aqua Fria River (Also the north end of Lake Pleasant); | | | | |
| 16. thence, southwesterly and southerly along the Maricopa-Yavapai County line to a point which is described by Arizona Revised Statute Section 11–109 as being on the center line of the Aqua Fria River, two miles southerly and below the mouth of Humbug Creek; | | | | |
| 17. thence, southerly along the center line of the Aqua Fria River to the intersection of the center line of the Aqua Fria River and the center line of Beardsley Canal, said point is generally in the northeast quarter of Section 17, Township 5 North, Range 1 East, as shown on the U.S. Geological Survey's Baldy Mountain, Arizona Quadrangle Map, 7.5 Minute series (Topographic), dated 1964; | | | | |

ARIZONA-OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| 18. thence, southwesterly and southerly along the center line of Beardsley Canal to a point which is the center line of the Beardsley Canal where it intersects with the center line of Indian School Road; | | | | |
| 19. thence, westerly along the center line of West Indian School Road to a point where the center line of West Indian School Road intersects with the center line of North Jackrabbit Trail; | | | | |
| 20. thence, southerly along the center line of Jackrabbit Trail approximately nine and three-quarter miles to a point where the center line of Jackrabbit Trail intersects with the Gila River, said point is generally on the north-south quarter section line of Section 8, Township 1 South, Range 2 West; | | | | |
| 21. thence, northeasterly and easterly up the Gila River to a point where the Gila River intersects with the northern extension of the western boundary of Estrella Mountain Regional Park, which point is generally the quarter corner of the northern line of Section 31, Township 1 North, Range 1 West; | | | | |
| 22. thence, southerly along the extension of the western boundary and along the western boundary of Estrella Mountain Regional Park to a point where the southern extension of the western boundary of Estrella Mountain Regional Park intersects with the southern line of Township 1 South; | | | | |
| 23. thence, easterly along the southern line of Township 1 South to a point where the south line of Township 1 South intersects with the western line of Range 1 East, which line is generally the southern boundary of Estrella Mountain Regional Park; | | | | |
| 24. thence, southerly along the western line of Range 1 East to the southwest corner of Section 18, Township 2 South, Range 1 East, said line is the western boundary of the Gila River Indian Reservation; | | | | |
| 25. thence, easterly along the southern boundary of the Gila River Indian reservation, which is the southern line of Sections 13, 14, 15, 16, 17 and 18, Township 2 South, Range 1 East, to the boundary between Maricopa and Pinal Counties as described in Arizona Revised Statutes Section 11–109 and 11–113, which is the eastern line of Range 1 East; | | | | |
| 26. thence, northerly along the eastern boundary of Range 1 East, which is the common boundary between Maricopa and Pinal Counties, to a point where the eastern line of Range 1 East intersects the Gila River; | | | | |
| 27. thence, southerly up the Gila River to a point where the Gila River intersects with the southern line of Township 2 South; and. | | | | |
| 28. thence, easterly along the southern line of Township 2 South to the point of beginning which is a point where the southern line of Township 2 South intersects with the eastern line of Range 7 East. | | | | |
| Tucson Area: | | | | |
| Pima County (part) | | | | |
| Tuscon area | ..... | 1 hr. std. N.A.[2] | | |
| Rest of State | ..... | 1 hr. std. N.A.[2] | | |
| Apache County | | | | |
| Cochise County | | | | |
| Coconino County | | | | |
| Gila County | | | | |

ARIZONA-OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Graham County | | | | |
| Greenlee County | | | | |
| La Paz County | | | | |
| Maricopa County (part) | | | | |
| area outside of Phoenix | | | | |
| Mohave County | | | | |
| Navajo County | | | | |
| Pima County (part) | | | | |
| Remainder of county | | | | |
| Pinal County | | | | |
| Santa Cruz County | | | | |
| Yavapai County | | | | |
| Yuma County | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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5. In § 81.304, the table entitled ''Arkansas—Ozone'' is revised to read as follows:

**§ 81.304 Arkansas.**

* * * * * * *

ARKANSAS—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| AQCR 016 Central Arkansas Intrastate (part) | ..... | 1 hr. std. N.A.[2] | | |
| Pulaski County | | | | |
| AQCR 016 Central Arkansas Intrastate (Remainder of) | ..... | 1 hr. std. N.A.[2] | | |
| Chicot County | | | | |
| Clark County | | | | |
| Cleveland County | | | | |
| Conway County | | | | |
| Dallas County | | | | |
| Desha County | | | | |
| Drew County | | | | |
| Faulkner County | | | | |
| Garland County | | | | |
| Grant County | | | | |
| Hot Spring County | | | | |
| Jefferson County | | | | |
| Lincoln County | | | | |
| Lonoke County | | | | |
| Perry County | | | | |
| Pope County | | | | |
| Saline County | | | | |
| Yell County | | | | |
| AQCR 017 Metropolitan Fort Smith Interstate | ..... | 1 hr. std. N.A.[2] | | |
| Benton County | | | | |
| Crawford County | | | | |
| Sebastian County | | | | |
| Washington County | | | | |
| AQCR 018 Metropolitan Memphis Interstate | ..... | 1 hr. std. N.A.[2] | | |
| Crittenden County | | | | |
| AQCR 019 Monroe-El Dorado Interstate | ..... | 1 hr. std. N.A.[2] | | |
| Ashley County | | | | |
| Bradley County | | | | |
| Calhoun County | | | | |
| Nevada County | | | | |
| Ouachita County | | | | |
| Union County | | | | |
| AQCR 020 Northeast Arkansas Intrastate | ..... | 1 hr. std. N.A.[2] | | |
| Arkansas County | | | | |
| Clay County | | | | |
| Craighead County | | | | |
| Cross County | | | | |
| Greene County | | | | |
| Independence County | | | | |

ARKANSAS—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Jackson County | | | | |
| Lawrence County | | | | |
| Lee County | | | | |
| Mississippi County | | | | |
| Monroe County | | | | |
| Phillips County | | | | |
| Poinsett County | | | | |
| Prairie County | | | | |
| Randolph County | | | | |
| Sharp County | | | | |
| St. Francis County | | | | |
| White County | | | | |
| Woodruff County | | | | |
| AQCR 021 Northwest Arkansas Intrastate | ..... | 1 hr. std. N.A.[2] | | |
| Baxter County | | | | |
| Boone County | | | | |
| Carroll County | | | | |
| Cleburne County | | | | |
| Franklin County | | | | |
| Fulton County | | | | |
| Izard County | | | | |
| Johnson County | | | | |
| Logan County | | | | |
| Madison County | | | | |
| Marion County | | | | |
| Montgomery County | | | | |
| Newton County | | | | |
| Pike County | | | | |
| Polk County | | | | |
| Scott County | | | | |
| Searcy County | | | | |
| Stone County | | | | |
| Van Buren County | | | | |
| AQCR 022 Shreveport-Texarkana-Tyler Interstate | ..... | 1 hr. std. N.A.[2] | | |
| Columbia County | | | | |
| Hempstead County | | | | |
| Howard County | | | | |
| Lafayette County | | | | |
| Little River County | | | | |
| Miller County | | | | |
| Sevier County | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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6. In 81.305, the table entitled ''California—Ozone'' is revised to read as follows:

**§ 81.305 California.**

* * * * * * *

CALIFORNIA—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Amador County Area ..... | 11/15/90 | Unclassifiable/Attainment | 11/15/90 | |
| Calaveras County Area: | | | | |
| Calaveras County ..... | 11/15/90 | Unclassifiable/Attainment | 11/15/90 | |
| Chico Area: | | | | |
| Butte County ..... | ..... | 1 hr. std. N.A.[2] | | |
| Imperial County Area: | | | | |
| Imperial County ..... | 11/15/90 | Nonattainment ..... | 11/15/90 | Sec. 185A Area.[3] |
| Los Angeles-South Coast Air Basin Area: | | | | |
| Los Angeles County (part)—that portion of Los Angeles County which lies south and west of a line described as follows. | 11/15/90 | Nonattainment ..... | 11/15/90 | Extreme. |

CALIFORNIA—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| 1. Beginning at the Los Angeles-San Bernardino County boundary and running west along the Township line common to Township 3 North and Township 2 North, San Bernardino Base and Meridian;<br>2. then north along the range line common to Range 8 West and Range 9 West;<br>3. then west along the Township line common to Township 4 North and Township 3 North;<br>4. then north along the range line common to Range 12 West and Range 13 West to the southeast corner of Section 12, Township 5 North and Range 13 West;<br>5. then west along the south boundaries of Sections 12, 11, 10, 9, 8, and 7, Township 5 North and Range 13 West to the boundary of the Angeles National Forest which is collinear with the range line common to Range 13 West and Range 14 West;<br>6. then north and west along the Angeles National Forest boundary to the point of intersection with the Township line common to Township 7 North and Township 6 North (point is at the northwest corner of Section 4 in Township 6 North and Range 14 West);<br>7. then west along the Township line common to Township 7 North and Township 6 North;<br>8. then north along the range line common to Range 15 West and Range 16 West to the southeast corner of Section 13, Township 7 North and Range 16 West;<br>9. then along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 7 North and Range 16 West;<br>10. then north along the range line common to Range 16 West and Range 17 West to the north boundary of the Angeles National Forest (collinear with the Township line common to Township 8 North and Township 7 North);<br>11. then west along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant;<br>12. then west and north along this land grant boundary to the Los Angeles-Kern County boundary. | | | | |
| Orange County | 11/15/90 | Nonattainment | 11/15/90 | Extreme. |
| Riverside County (part)—that portion of Riverside County which lies to the west of a line described as follows.<br>1. Beginning at the Riverside-San Diego County boundary and running north along the range line common to Range 4 East and Range 3 East, San Bernardino Base and Meridian;<br>2. then east along the Township line common to Township 8 South and Township 7 South;<br>3. then north along the range line common to Range 5 East and Range 4 East;<br>4. then west along the Township line common to Township 6 South and Township 7 South to the southwest corner of Section 34, Township 6 South, Range 4 East;<br>5. then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East;<br>6. then west along the Township line common to Township 5 South and Township 6 South;<br>7. then north along the range line common to Range 4 East and Range 3 East; | 11/15/90 | Nonattainment | 11/15/90 | Extreme. |

CALIFORNIA—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| 8. then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East; | | | | |
| 9. then north along the range line common to Range 2 East and Range 3 East; | | | | |
| 10. then west along the Township line common to Township 4 South and Township 3 South to the intersection of the southwest boundary of partial Section 31, Township 3 South, Range 1 West; | | | | |
| 11. then northwest along that line to the intersection with the range line common to Range 2 West and Range 1 West; | | | | |
| 12. then north to the Riverside-San Bernardino County line, | | | | |
| San Bernardino County (part)—that portion of San Bernardino County which lies south and west of a line described as follows. | 11/15/90 | Nonattainment | 11/15/90 | Extreme. |
| 1. Beginning at the San Bernardino-Riverside County boundary and running north along the range line common to Range 3 East and Range 2 East, San Bernardino Base and Meridian; | | | | |
| 2. then west along the Township line common to Township 3 North and Township 2 North to the San Bernardino-Los Angeles County boundary. | | | | |
| Monterey Bay Area: | | | | |
| Monterey County | | 1 hr. std. N.A.[2] | | |
| San Benito County | | 1 hr. std. N.A.[2] | | |
| Santa Cruz County | | 1 hr. std. N.A.[2] | | |
| Sacramento Metro Area: | | | | |
| El Dorado County (part) | 11/15/90 | Nonattainment | 6/1/95 | Severe-15. |
| All portions of the county except that portion of El Dorado County within the drainage area naturally tributary to Lake Tahoe including said Lake. | | | | |
| Placer County (part) | 11/15/90 | Nonattainment | 6/1/95 | Severe-15. |
| All portions of the county except that portion of Placer County within the drainage area naturally tributary to Lake Tahoe including said Lake, plus that area in the vicinity of the head of the Truckee River described as follows: commencing at the point common to the aforementioned drainage area crestline and the line common to Townships 15 North and 16 North, Mount Diablo Base and Meridian (M.D.B.&M.), and following that line in a westerly direction to the northwest corner of Section 3, Township 15 North, Range 16 East, M.D.B.&M., thence south along the west line of Sections 3 and 10, Township 15 North, Range 16 East, M.D.B.&M., to the intersection with the said drainage area crestline, thence following the said drainage area boundary in a southeasterly, then northeasterly direction to and along the Lake Tahoe Dam, thence following the said drainage area crestline in a northeasterly, then northwesterly direction to the point of beginning. | | | | |
| Sacramento County | 11/15/90 | Nonattainment | 6/1/95 | Severe-15. |
| Solano County (part) That portion of Solano County which lies north and east of a line described as follows. | 11/15/90 | Nonattainment | 6/1/95 | Severe-15. |

CALIFORNIA—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Description of boundary in Solano County between San Francisco and Sacramento: Beginning at the intersection of the westerly boundary of Solano County and the ¼ section line running east and west through the center of Section 34; T. 6 N., R. 2 W., M.D.B.&M., thence east along said ¼ section line to the east boundary of Section 36, T. 6 N., R. 2 W., thence south ½ mile and east 2.0 miles, more or less, along the west and south boundary of Los Putos Rancho to the northwest corner of Section 4, T. 5 N., R. 1 W., thence east along a line common to T. 5 N. and T. 6 N. to the northeast corner of Section 3, T. 5 N., R. 1 E., thence south along section lines to the southeast corner of Section 10, T. 3 N., R. 1 E., thence east along section lines to the south ¼ corner of Section 8, T. 3 N., R. 2 E., thence east to the boundary between Solano and Sacramento Counties. | | | | |
| Sutter County (part—southern portion) | 11/15/90 | Nonattainment | 6/1/95 | Severe-15. |
| South of a line connecting the northern border of Yolo Co. to the SW tip of Yuba Co. and continuing along the southern Yuba County border to Placer County. | | | | |
| Yolo County | 11/15/90 | Nonattainment | 6/1/95 | Severe-15. |
| San Diego Area: | | | | |
| San Diego County | 2/21/95 | Nonattainment | 2/21/95 | Serious. |
| San Francisco-Bay Area: | | | | |
| Alameda County | 6/21/95 | Attainment | | |
| Contra Costa County | 6/21/95 | Attainment | | |
| Marin County | 6/21/95 | Attainment | | |
| Napa County | 6/21/95 | Attainment | | |
| San Francisco County | 6/21/95 | Attainment | | |
| San Clara County | 6/21/95 | Attainment | | |
| San Mateo County | 6/21/95 | Attainment | | |
| Solano County (part) | 6/21/95 | Attainment | | |
| That portion of the county that lies south and west of the line described that follows: Description of boundary in Solano County between San Francisco and Sacramento: Beginning at the intersection at the westerly boundary of Solano County and the ¼ section line running east and west through the center of Section 34; T. 6 N., R. 2 W., M.D.B.&M., thence east along said ½ section line to the east boundary of Section 36, T. 6 N., R. 2 W., thence south ½ mile and east 2.0 miles, more or less, along the west and south boundary of Los Putos Rancho to the northwest corner of Section 4, T. 5 N., R. 1 W, thence east along a line common to T. 5 N., and T. 6 N. to the northeast corner of Section 3, T. 5 N., R. 1 E., thence south along section lines to the southeast corner of Section 10 T. 3 N., R. 1 E., thence east along section lines to the south ¼ corner of Section 8 T. 3 N., R. 2 E., thence east to the boundary between Solano and Sacramento Counties. | | | | |
| Sonoma County (part) | 6/21/95 | Attainment | | |
| San Joaquin Valley Area: | | | | |
| Fresno County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Kern County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Kings County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Madera County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Merced County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| San Joaquin County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Stanislaus County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Tulare County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Santa Barbara-Santa Maria-Lompoc Area: | | | | |
| Santa Barbara County | 11/15/90 | Nonattainment | 1/09/98 | Serious. |
| Southeast Desert Modified AQMA Area: | | | | |

CALIFORNIA—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Los Angeles County (part)—that portion of Los Angeles County which lies north and east of a line described as follows.<br>1. Beginning at the Los Angeles-San Bernardino County boundary and running west along the Township line common to Township 3 North and Township 2 North, San Bernardino Base and Meridian;<br>2. then north along the range line common to Range 8 West and Range 9 West;<br>3. then west along the Township line common to Township 4 North and Township 3 North;<br>4. then north along the range line common to Range 12 West and Range 13 West to the southeast corner of Section 12, Township 5 North and Range 13 West;<br>5. then west along the south boundaries of Sections 12, 11, 10, 9, 8, and 7, Township 5 North and Range 13 West to the boundary of the Angeles National Forest which is collinear with the range line common to Range 13 West and Range 14 West;<br>6. then north and west along the Angeles National Forest boundary to the point of intersection with the Township line common to Township 7 North and Township 6 North (point is at the northwest corner of Section 4 in Township 6 North and Range 14 West);<br>7. then west along the Township line common to Township 7 North and Township 6 North;<br>8. then north along the range line common to Range 15 West and Range 16 West to the southeast corner of Section 13, Township 7 North and Range 16 West;<br>9. then along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 7 North and Range 16 West;<br>10. then north along the range line common to Range 16 West and Range 17 West to the north boundary of the Angeles National Forest (collinear with the Township line common to Township 8 North and Township 7 North);<br>11. then west along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant;<br>12. then west and north along this land grant boundary to the Los Angeles-Kern County boundary. | 11/15/90 | Nonattainment ..... | 11/15/90 | Severe-17. |
| Riverside County (part)—that portion of Riverside County which lies to the east of a line described as follows.<br>1. Beginning at the Riverside-San Diego County boundary and running north along the range line common to Range 4 East and Range 3 East, San Bernardino Base and Meridian;<br>2. then east along the Township line common to Township 8 South and Township 7 South;<br>3. then north along the range line common to Range 5 East and Range 4 East;<br>4. then west along the Township line common to Township 6 South and Township 7 South to the southwest corner of Section 34, Township 6 South, Range 4 East;<br>5. then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East;<br>6. then west along the Township line common to Township 5 South and Township 6 South;<br>7. then north along the range line common to Range 4 East and Range 3 East; | 11/15/90 | Nonattainment ..... | 11/15/90 | Severe-17. |

CALIFORNIA—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| 8. then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East;<br>9. then north along the range line common to Range 2 East and Range 3 East;<br>10. then west along the Township line common to Township 4 South and Township 3 South to the intersection of the southwest boundary of partial Section 31, Township 3 South, Range 1 West;<br>11. then northwest along that line to the intersection with the range line common to Range 2 West and Range 1 West;<br>12. then north to the Riverside-San Bernardino County line, and that portion of Riverside County which lies to the west of a line described as follows:<br>13. beginning at the northeast corner of Section 4, Township 2 South, Range 5 East, a point on the boundary line common to Riverside and San Bernardino Counties;<br>14. then southerly along section lines to the centerline of the Colorado River Aquaduct;<br>15. then southeasterly along the centerline of said Colorado River Aquaduct to the southerly line of Section 36, Township 3 South, Range 7 East;<br>16. then easterly along the Township line to the northeast corner of Section 6, Township 4 South, Range 9 East;<br>17. then southerly along the easterly line of Section 6 to the southeast corner thereof;<br>18. then easterly along section lines to the northeast corner of Section 10, Township 4 South, Range 9 East;<br>19. then southerly along section lines to the southeast corner of Section 15, Township 4 South, Range 9 East;<br>20. then easterly along the section lines to the northeast corner of Section 21, Township 4 South, Range 10 East;<br>21. then southerly along the easterly line of Section 21 to the southeast corner thereof;<br>22. then easterly along the northerly line of Section 27 to the northeast corner thereof;<br>23. then southerly along section lines to the southeast corner of Section 34, Township 4 South, Range 10 East;<br>24. then easterly along the Township line to the northeast corner of Section 2, Township 5 South, Range 10 East;<br>25. then southerly along the easterly line of Section 2, to the southeast corner thereof;<br>26. then easterly along the northerly line of Section 12 to the northeast corner thereof;<br>27. then southerly along the range line to the southwest corner of Section 18, Township 5 South, Range 11 East;<br>28. then easterly along section lines to the northeast corner of Section 24, Township 5 South, Range 11 East;<br>29. then southerly along the range line to the southeast corner of Section 36, Township 8 South, Range 11 East, a point on the boundary line common to Riverside and San Diego Counties. | | | | |
| San Bernadino County (part)—that portion of San Bernardino County which lies north and east of a line described as follows.<br>1. Beginning at the San Bernardino-Riverside County boundary and running north along the range line common to Range 3 East and Range 2 East, San Bernardino Base and Meridian; | 11/15/90 | Nonattainment ..... | 11/15/90 | Severe-17. |

CALIFORNIA—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| 2. then west along the Township line common to Township 3 North and Township 2 North to the San Bernardino-Los Angeles County boundary; and that portion of San Bernardino County which lies south and west of a line described as follows: | | | | |
| 3. latitude 35 degrees, 10 minutes north and longitude 115 degrees, 45 minutes west. | | | | |
| Ventura County Area: | | | | |
| Ventura County | 11/15/90 | Nonattainment | 11/15/90 | Severe-15. |
| Yuba City Area: | | | | |
| Sutter County (part—northern portion). | | | | |
| North of a line connecting the northern border of Yolo County to the SW tip of Yuba County and continuing along the southern Yuba County border to Placer County | | 1 hr. std. N.A.[2] | | |
| Yuba County | | 1 hr. std. N.A.[2] | | |
| Great Basin Valleys Air Basin | | 1 hr. std. N.A.[2] | | |
| Alpine County | | | | |
| Inyo County | | | | |
| Mono County | | | | |
| Lake County Air Basin | | 1 hr. std. N.A.[2] | | |
| Lake County | | | | |
| Lake Tahoe Air Basin | | 1 hr. std. N.A.[2] | | |
| El Dorado County (part) | | | | |
| Lake Tahoe Area: As described under 40 CFR 81.275. | | | | |
| Placer County (part) | | | | |
| Lake Tahoe Area: As described under 40 CFR 81.275. | | | | |
| Mountain Counties Air Basin (Remainder of): | | | | |
| Mariposa County | | 1 hr. std. N.A.[2] | | |
| Nevada County | | 1 hr. std. N.A.[2] | | |
| Plumas County | | 1 hr. std. N.A.[2] | | |
| Sierra County | | 1 hr. std. N.A.[2] | | |
| Tuolumne County | | 1 hr. std. N.A.[2] | | |
| North Coast Air Basin | | 1 hr. std. N.A.[2] | | |
| Del Norte County | | | | |
| Humboldt County | | | | |
| Mendocino County | | | | |
| Sonoma County (part) | | | | |
| Remainder of County | | | | |
| Trinity County | | | | |
| Northeast Plateau Air Basin | | 1 hr. std. N.A.[2] | | |
| Lassen County | | | | |
| Modoc County | | | | |
| Siskiyou County | | | | |
| Sacramento Valley Air Basin (Remainder of): | | | | |
| Colusa County | | 1 hr. std. N.A.[2] | | |
| Glenn County | | 1 hr. std. N.A.[2] | | |
| Shasta County | | 1 hr. std. N.A.[2] | | |
| Tehama County | | 1 hr. std. N.A.[2] | | |
| South Central Coast Air Basin (Remainder of): | | | | |
| Channel Islands | | 1 hr. std. N.A.[2] | | |
| San Luis Obispo County | | 1 hr. std. N.A.[2] | | |
| Southeast Desert NON-AQMA: | | | | |
| Riverside County (part) | | | | |
| Remainder of County | | 1 hr. std. N.A.[2] | | |
| San Bernadino County (part). | | | | |
| Remainder of County | | 1 hr. std. N.A.[2] | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.
[3] An area designated as an ozone nonattainment area as of the date of enactment of the CAAA of 1990 that did not violate the ozone NAAQS during the period of 1987–1989.

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7. In § 81.306, the table entitled ''Colorado—Ozone'' is revised to read as follows:

**§ 81.306 Colorado.**

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COLORADO—OZONE (1-HOUR STANDARD)

| Designation area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Denver—Boulder Area: | | | | |
| Adams County (part) | | | | |
| West of Kiowa Creek | | 1 hr. std. N.A.[2] | | |
| Arapahoe County (part) | | . | | |
| West of Kiowa Creek | | 1 hr. std. N.A.[2] | | |
| Boulder County (part) | | | | |
| excluding Rocky Mtn. National Park | | 1 hr. std. N.A.[2] | | |
| Denver County | | 1 hr. std. N.A.[2] | | |
| Douglas County | | 1 hr. std. N.A.[2] | | |
| Jefferson County | | 1 hr. std. N.A.[2] | | |
| State AQCR 01 | | 1 hr. std. N.A.[2] | | |
| Logan County | | | | |
| Morgan County | | | | |
| Phillips County | | | | |
| Sedgwick County | | | | |
| Washington County | | | | |
| Yuma County | | | | |
| State AQCR 02 | | 1 hr. std. N.A.[2] | | |
| Larimer County | | | | |
| Weld County | | | | |
| State AQCR 03 (Remainder of) | | 1 hr. std. N.A.[2] | | |
| Adams County (part) | | | | |
| East of Kiowa Creek | | | | |
| Arapahoe County (part) | | | | |
| East of Kiowa Creek | | | | |
| Boulder County (part) | | | | |
| Rocky Mtn. National Park Only | | | | |
| Clear Creek County | | | | |
| Gilpin County | | | | |
| State AQCR 11 | | 1 hr. std. N.A.[2] | | |
| Garfield County | | | | |
| Mesa County | | | | |
| Moffat County | | | | |
| Rio Blanco County | | | | |
| Rest of State | | 1 hr. std. N.A.[2] | | |
| Alamosa County | | | | |
| Archuleta County | | | | |
| Baca County | | | | |
| Bent County | | | | |
| Chaffee County | | | | |
| Cheyenne County | | | | |
| Conejos County | | | | |
| Costilla County | | | | |
| Crowley County | | | | |
| Custer County | | | | |
| Delta County | | | | |
| Dolores County | | | | |
| Eagle County | | | | |
| El Paso County | | | | |
| Elbert County | | | | |
| Fremont County | | | | |
| Grand County | | | | |
| Gunnison County | | | | |
| Hinsdale County | | | | |
| Huerfano County | | | | |
| Jackson County | | | | |
| Kiowa County | | | | |
| Kit Carson County | | | | |
| La Plata County | | | | |
| Lake County | | | | |
| Las Animas County | | | | |
| Lincoln County | | | | |
| Mineral County | | | | |
| Montezuma County | | | | |
| Montrose County | | | | |
| Otero County | | | | |
| Ouray County | | | | |
| Park County | | | | |
| Pitkin County | | | | |
| Prowers County | | | | |

COLORADO—OZONE (1-HOUR STANDARD)—Continued

| Designation area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Pueblo County | | | | |
| Rio Grande County | | | | |
| Routt County | | | | |
| Saguache County | | | | |
| San Juan County | | | | |
| San Miguel County | | | | |
| Summit County | | | | |
| Teller County | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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8. In § 81.307, the table entitled ''Connecticut—Ozone'' is revised to read as follows:

**§ 81.307 Connecticut.**

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CONNECTICUT—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Greater Connecticut Area: | | | | |
| Fairfield County (part) | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Shelton City | | | | |
| Hartford County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Litchfield County (part) | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| all cities and townships except: | | | | |
| Bridgewater Town, New Milford Town | | | | |
| Middlesex County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| New Haven County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| New London County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Tolland County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Windham County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| New York-N. New Jersey-Long Island Area: | | | | |
| Fairfield County (part). | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| all cities and towns except Shelton City | | | | |
| Litchfield County (part) | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Bridgewater Town, New Milford Town | | | | |

[1] This date is March 17, 1998, unless otherwise noted.

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9. In § 81.308, the table entitled ''Delaware—Ozone'' is revised to read as follows:

**§ 81.308 Delaware.**

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DELAWARE—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Philadelphia-Wilmington-Trenton Area: | | | | |
| Kent County | 11/15/90 | Nonattainment | 11/15/90 | Severe-15. |
| New Castle County | 11/15/90 | Nonattainment | 11/15/90 | Severe-15. |
| Sussex County Area: | | | | |
| Sussex County | | 1 hr. std. N.A.[2] | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard not applicable.

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10. In Section 81.309, the table entitled ''District of Columbia—Ozone'' is revised to read as follows:

**§ 81.309 District of Columbia.**

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DISTRICT OF COLUMBIA—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Washington Area: | | | | |
| Washington | | | | |
| Entire Area | 11/15/90 | Nonattainment | 11/15/90 | Serious. |

[1] This date is March 17, 1998, unless otherwise noted.

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11. In § 81.310, the table entitled ''Florida—Ozone'' is revised to read as follows:

**§ 81.310 Florida.**

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FLORIDA—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Statewide | | 1 hr. std. N.A.[2] | | |
| Alachua County | | | | |
| Baker County | | | | |
| Bay County | | | | |
| Bradford County | | | | |
| Brevard County | | | | |
| Broward County | | | | |
| Calhoun County | | | | |
| Charlotte County | | | | |
| Citrus County | | | | |
| Clay County | | | | |
| Collier County | | | | |
| Columbia County | | | | |
| Dade County | | | | |
| De Soto County | | | | |
| Dixie County | | | | |
| Duval County | | | | |
| Escambia County | | | | |
| Flagler County | | | | |
| Franklin County | | | | |
| Gadsden County | | | | |
| Gilchrist County | | | | |
| Glades County | | | | |
| Gulf County | | | | |
| Hamilton County | | | | |
| Hardee County | | | | |
| Hendry County | | | | |
| Hernando County | | | | |
| Highlands County | | | | |
| Hillsborough County | | | | |
| Holmes County | | | | |
| Indian River County | | | | |
| Jackson County | | | | |
| Jefferson County | | | | |
| Lafayette County | | | | |
| Lake County | | | | |
| Lee County | | | | |
| Leon County | | | | |
| Levy County | | | | |
| Liberty County | | | | |
| Madison County | | | | |
| Manatee County | | | | |
| Marion County | | | | |
| Martin County | | | | |
| Monroe County | | | | |
| Nassau County | | | | |
| Okaloosa County | | | | |
| Okeechobee County | | | | |
| Orange County | | | | |
| Osceola County | | | | |
| Palm Beach County | | | | |
| Pasco County | | | | |
| Pinellas County | | | | |

FLORIDA—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Polk County | | | | |
| Putnam County | | | | |
| Santa Rosa County | | | | |
| Sarasota County | | | | |
| Seminole County | | | | |
| St. Johns County | | | | |
| St. Lucie County | | | | |
| Sumter County | | | | |
| Suwannee County | | | | |
| Taylor County | | | | |
| Union County | | | | |
| Volusia County | | | | |
| Wakulla County | | | | |
| Walton County | | | | |
| Washington County | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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12. In § 81.311, the table entitled ''Georgia—Ozone'' is revised to read as follows:

**§ 81.311 Georgia.**

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GEORGIA—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Atlanta Area: | | | | |
| Cherokee County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Clayton County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Cobb County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Coweta County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| De Kalb County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Douglas County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Fayette County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Forsyth County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Fulton County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Gwinnett County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Henry County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Paulding County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Rockdale County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Spalding County Area: | | | | |
| Spalding County | 11/15/90 | Unclassifiable/Attainment | 11/15/90 | |
| Rest of State | | 1 hr. std. N.A.[2] | | |
| Appling County | | | | |
| Atkinson County | | | | |
| Bacon County | | | | |
| Baker County | | | | |
| Baldwin County | | | | |
| Banks County | | | | |
| Barrow County | | | | |
| Bartow County | | | | |
| Ben Hill County | | | | |
| Berrien County | | | | |
| Bibb County | | | | |
| Bleckley County | | | | |
| Brantley County | | | | |
| Brooks County | | | | |
| Bryan County | | | | |
| Bulloch County | | | | |
| Burke County | | | | |
| Butts County | | | | |
| Calhoun County | | | | |
| Camden County | | | | |
| Candler County | | | | |
| Carroll County | | | | |
| Catoosa County | | | | |

GEORGIA—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Charlton County | | | | |
| Chatham County | | | | |
| Chattahoochee County | | | | |
| Chattooga County | | | | |
| Clarke County | | | | |
| Clay County | | | | |
| Clinch County | | | | |
| Coffee County | | | | |
| Colquitt County | | | | |
| Columbia County | | | | |
| Cook County | | | | |
| Crawford County | | | | |
| Crisp County | | | | |
| Dade County | | | | |
| Dawson County | | | | |
| Decatur County | | | | |
| Dodge County | | | | |
| Dooly County | | | | |
| Dougherty County | | | | |
| Early County | | | | |
| Echols County | | | | |
| Effingham County | | | | |
| Elbert County | | | | |
| Emanuel County | | | | |
| Evans County | | | | |
| Fannin County | | | | |
| Floyd County | | | | |
| Franklin County | | | | |
| Gilmer County | | | | |
| Glascock County | | | | |
| Glynn County | | | | |
| Gordon County | | | | |
| Grady County | | | | |
| Greene County | | | | |
| Habersham County | | | | |
| Hall County | | | | |
| Hancock County | | | | |
| Haralson County | | | | |
| Harris County | | | | |
| Hart County | | | | |
| Heard County | | | | |
| Houston County | | | | |
| Irwin County | | | | |
| Jackson County | | | | |
| Jasper County | | | | |
| Jeff Davis County | | | | |
| Jefferson County | | | | |
| Jenkins County | | | | |
| Johnson County | | | | |
| Jones County | | | | |
| Lamar County | | | | |
| Lanier County | | | | |
| Laurens County | | | | |
| Lee County | | | | |
| Liberty County | | | | |
| Lincoln County | | | | |
| Long County | | | | |
| Lowndes County | | | | |
| Lumpkin County | | | | |
| Macon County | | | | |
| Madison County | | | | |
| Marion County | | | | |
| McDuffie County | | | | |
| McIntosh County | | | | |
| Meriwether County | | | | |
| Miller County | | | | |
| Mitchell County | | | | |
| Monroe County | | | | |
| Montgomery County | | | | |
| Morgan County | | | | |

GEORGIA—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Murray County | | | | |
| Muscogee County | | | | |
| Newton County | | | | |
| Oconee County | | | | |
| Oglethorpe County | | | | |
| Peach County | | | | |
| Pickens County | | | | |
| Pierce County | | | | |
| Pike County | | | | |
| Polk County | | | | |
| Pulaski County | | | | |
| Putnam County | | | | |
| Quitman County | | | | |
| Rabun County | | | | |
| Randolph County | | | | |
| Richmond County | | | | |
| Schley County | | | | |
| Screven County | | | | |
| Seminole County | | | | |
| Stephens County | | | | |
| Stewart County | | | | |
| Sumter County | | | | |
| Talbot County | | | | |
| Taliaferro County | | | | |
| Tattnall County | | | | |
| Taylor County | | | | |
| Telfair County | | | | |
| Terrell County | | | | |
| Thomas County | | | | |
| Tift County | | | | |
| Toombs County | | | | |
| Towns County | | | | |
| Treutlen County | | | | |
| Troup County | | | | |
| Turner County | | | | |
| Twiggs County | | | | |
| Union County | | | | |
| Upson County | | | | |
| Walker County | | | | |
| Walton County | | | | |
| Ware County | | | | |
| Warren County | | | | |
| Washington County | | | | |
| Wayne County | | | | |
| Webster County | | | | |
| Wheeler County | | | | |
| White County | | | | |
| Whitfield County | | | | |
| Wilcox County | | | | |
| Wilkes County | | | | |
| Wilkinson County | | | | |
| Worth County | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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13. In § 81.312, the table entitled ''Hawaii—Ozone'' is revised to read as follows:

**§ 81.312 Hawaii.**

* * * * * * *

HAWAII—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Statewide | | 1 hr. std. N.A.[2] | | |
| Hawaii County | | | | |
| Honolulu County | | | | |

HAWAII—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Kalawao | | | | |
| Kauai County | | | | |
| Maui County | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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14. In § 81.313, the table entitled ''Idaho—Ozone'' is revised to read as follows:

**§ 81.313 Idaho.**

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IDAHO—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| AQCR 61 Eastern Idaho Intrastate | | 1 hr. std. N.A.[2] | | |
| Bannock County | | | | |
| Bear Lake County | | | | |
| Bingham County | | | | |
| Bonneville County | | | | |
| Butte County | | | | |
| Caribou County | | | | |
| Clark County | | | | |
| Franklin County | | | | |
| Fremont County | | | | |
| Jefferson County | | | | |
| Madison County | | | | |
| Oneida County | | | | |
| Power County | | | | |
| Teton County | | | | |
| AQCR 62 E Washington-N Idaho Interstate | | 1 hr. std. N.A.[2] | | |
| Benewah County | | | | |
| Kootenai County | | | | |
| Latah County | | | | |
| Nez Perce County | | | | |
| Shoshone County | | | | |
| AQCR 63 Idaho Intrastate | | 1 hr. std. N.A.[2] | | |
| Adams County | | | | |
| Blaine County | | | | |
| Boise County | | | | |
| Bonner County | | | | |
| Boundary County | | | | |
| Camas County | | | | |
| Cassia County | | | | |
| Clearwater County | | | | |
| Custer County | | | | |
| Elmore County | | | | |
| Gem County | | | | |
| Gooding County | | | | |
| Idaho County | | | | |
| Jerome County | | | | |
| Lemhi County | | | | |
| Lewis County | | | | |
| Lincoln County | | | | |
| Minidoka County | | | | |
| Owyhee County | | | | |
| Payette County | | | | |
| Twin Falls County | | | | |
| Valley County | | | | |
| Washington County | | | | |
| AQCR 64 Metropolitan Boise Interstate | | 1 hr. std. N.A.[2] | | |
| Ada County | | | | |
| Canyon County | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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15. In § 81.314, the table entitled ''Illinois—Ozone'' is revised to read as follows:

**§ 81.314 Illinois.**

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ILLINOIS—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Chicago-Gary-Lake County Area: | | | | |
| Cook County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Du Page County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Grundy County (part): | | | | |
| Aux Sable Township | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Goose Lake Township | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Kane County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Kendall County (part): | | | | |
| Oswego Township | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Lake County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| McHenry County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Will County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Jersey County Area: | | | | |
| Jersey County | | 1 hr. std. N.A.[2] | | |
| St. Louis Area: | | | | |
| Madison County | 11/15/90 | Nonattainment | 11/15/90 | Moderate. |
| Monroe County | 11/15/90 | Nonattainment | 11/15/90 | Moderate. |
| St. Clair County | 11/15/90 | Nonattainment | 11/15/90 | Moderate. |
| Adams County | | 1 hr. std. N.A.[2] | | |
| Alexander County | | 1 hr. std. N.A.[2] | | |
| Bond County | | 1 hr. std. N.A.[2] | | |
| Boone County | | 1 hr. std. N.A.[2] | | |
| Brown County | | 1 hr. std. N.A.[2] | | |
| Bureau County | | 1 hr. std. N.A.[2] | | |
| Calhoun County | | 1 hr. std. N.A.[2] | | |
| Carroll County | | 1 hr. std. N.A.[2] | | |
| Cass County | | 1 hr. std. N.A.[2] | | |
| Champaign County | | 1 hr. std. N.A.[2] | | |
| Christian County | | 1 hr. std. N.A.[2] | | |
| Clark County | | 1 hr. std. N.A.[2] | | |
| Clay County | | 1 hr. std. N.A.[2] | | |
| Clinton County | | 1 hr. std. N.A.[2] | | |
| Coles County | | 1 hr. std. N.A.[2] | | |
| Crawford County | | 1 hr. std. N.A.[2] | | |
| Cumberland County | | 1 hr. std. N.A.[2] | | |
| De Kalb County | | 1 hr. std. N.A.[2] | | |
| De Witt County | | 1 hr. std. N.A.[2] | | |
| Douglas County | | 1 hr. std. N.A.[2] | | |
| Edgar County | | 1 hr. std. N.A.[2] | | |
| Edwards County | | 1 hr. std. N.A.[2] | | |
| Effingham County | | 1 hr. std. N.A.[2] | | |
| Fayette County | | 1 hr. std. N.A.[2] | | |
| Ford County | | 1 hr. std. N.A.[2] | | |
| Franklin County | | 1 hr. std. N.A.[2] | | |
| Fulton County | | 1 hr. std. N.A.[2] | | |
| Gallatin County | | 1 hr. std. N.A.[2] | | |
| Greene County | | 1 hr. std. N.A.[2] | | |
| Grundy County (part): | | | | |
| All townships except Aux Sable and Goose Lake | | 1 hr. std. N.A.[2] | | |
| Hamilton County | | 1 hr. std. N.A.[2] | | |
| Hancock County | | 1 hr. std. N.A.[2] | | |
| Hardin County | | 1 hr. std. N.A.[2] | | |
| Henderson County | | 1 hr. std. N.A.[2] | | |
| Henry County | | 1 hr. std. N.A.[2] | | |
| Iroquois County | | 1 hr. std. N.A.[2] | | |
| Jackson County | | 1 hr. std. N.A.[2] | | |
| Jasper County | | 1 hr. std. N.A.[2] | | |
| Jefferson County | | 1 hr. std. N.A.[2] | | |
| Jo Daviess County | | 1 hr. std. N.A.[2] | | |
| Johnson County | | 1 hr. std. N.A.[2] | | |
| Kankakee County | | 1 hr. std. N.A.[2] | | |
| Kendall County (part): | | | | |
| All townships except Oswego | | 1 hr. std. N.A.[2] | | |
| Knox County | | 1 hr. std. N.A.[2] | | |

ILLINOIS—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| La Salle County | | 1 hr. std. N.A.[2] | | |
| Lawrence County | | 1 hr. std. N.A.[2] | | |
| Lee County | | 1 hr. std. N.A.[2] | | |
| Livingston County | | 1 hr. std. N.A.[2] | | |
| Logan County | | 1 hr. std. N.A.[2] | | |
| Macon County | | 1 hr. std. N.A.[2] | | |
| Macoupin County | | 1 hr. std. N.A.[2] | | |
| Marion County | | 1 hr. std. N.A.[2] | | |
| Marshall County | | 1 hr. std. N.A.[2] | | |
| Mason County | | 1 hr. std. N.A.[2] | | |
| Massac County | | 1 hr. std. N.A.[2] | | |
| McDonough County | | 1 hr. std. N.A.[2] | | |
| McLean County | | 1 hr. std. N.A.[2] | | |
| Menard County | | 1 hr. std. N.A.[2] | | |
| Mercer County | | 1 hr. std. N.A.[2] | | |
| Montgomery County | | 1 hr. std. N.A.[2] | | |
| Morgan County | | 1 hr. std. N.A.[2] | | |
| Moultrie County | | 1 hr. std. N.A.[2] | | |
| Ogle County | | 1 hr. std. N.A.[2] | | |
| Peoria County | | 1 hr. std. N.A.[2] | | |
| Perry County | | 1 hr. std. N.A.[2] | | |
| Piatt County | | 1 hr. std. N.A.[2] | | |
| Pike County | | 1 hr. std. N.A.[2] | | |
| Pope County | | 1 hr. std. N.A.[2] | | |
| Pulaski County | | 1 hr. std. N.A.[2] | | |
| Putnam County | | 1 hr. std. N.A.[2] | | |
| Randolph County | | 1 hr. std. N.A.[2] | | |
| Richland County | | 1 hr. std. N.A.[2] | | |
| Rock Island County | | 1 hr. std. N.A.[2] | | |
| Saline County | | 1 hr. std. N.A.[2] | | |
| Sangamon County | | 1 hr. std. N.A.[2] | | |
| Schuyler County | | 1 hr. std. N.A.[2] | | |
| Scott County | | 1 hr. std. N.A.[2] | | |
| Shelby County | | 1 hr. std. N.A.[2] | | |
| Stark County | | 1 hr. std. N.A.[2] | | |
| Stephenson County | | 1 hr. std. N.A.[2] | | |
| Tazewell County | | 1 hr. std. N.A.[2] | | |
| Union County | | 1 hr. std. N.A.[2] | | |
| Vermilion County | | 1 hr. std. N.A.[2] | | |
| Wabash County | | 1 hr. std. N.A.[2] | | |
| Warren County | | 1 hr. std. N.A.[2] | | |
| Washington County | | 1 hr. std. N.A.[2] | | |
| Wayne County | | 1 hr. std. N.A.[2] | | |
| White County | | 1 hr. std. N.A.[2] | | |
| Whiteside County | | 1 hr. std. N.A.[2] | | |
| Williamson County | | 1 hr. std. N.A.[2] | | |
| Winnebago County | | 1 hr. std. N.A.[2] | | |
| Woodford County | | 1 hr. std. N.A.[2] | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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16. In § 81.315, the table entitled ''Indiana—Ozone'' is revised to read as follows:

**§ 81.315 Indiana.**

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INDIANA-OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Chicago-Gary-Lake County Area: | | | | |
| Lake County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Porter County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Evansville Area: | | | | |
| Vanderburgh County | | 1 hr. std. N.A.[2] | | |
| Indianapolis Area: | | | | |
| Marion County | | 1 hr. std. N.A.[2] | | |

INDIANA-OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| La Porte County Area: | | | | |
| La Porte County | 11/15/90 | Unclassifiable/Attainment | 11/15/90 | |
| Louisville Area: | | | | |
| Clark County | 11/15/90 | Nonattainment | 11/15/90 | Moderate. |
| Floyd County | 11/15/90 | Nonattainment | 11/15/90 | Moderate. |
| South Bend-Elkhart Area: | | | | |
| Elkhart County | | 1 hr. std. N.A.[2] | | |
| St. Joseph County | | 1 hr. std. N.A.[2] | | |
| Warrick County Area: | | | | |
| Warrick County | 11/15/90 | Unclassifiable/Attainment | 11/15/90 | |
| Allen County | | 1 hr. std. N.A.[2] | | |
| Adams County | | 1 hr. std. N.A.[2] | | |
| Bartholomew County | | 1 hr. std. N.A.[2] | | |
| Benton County | | 1 hr. std. N.A.[2] | | |
| Blackford County | | 1 hr. std. N.A.[2] | | |
| Boone County | | 1 hr. std. N.A.[2] | | |
| Brown County | | 1 hr. std. N.A.[2] | | |
| Carroll County | | 1 hr. std. N.A.[2] | | |
| Cass County | | 1 hr. std. N.A.[2] | | |
| Clay County | | 1 hr. std. N.A.[2] | | |
| Clinton County | | 1 hr. std. N.A.[2] | | |
| Crawford County | | 1 hr. std. N.A.[2] | | |
| Daviess County | | 1 hr. std. N.A.[2] | | |
| De Kalb County | | 1 hr. std. N.A.[2] | | |
| Dearborn County | | 1 hr. std. N.A.[2] | | |
| Decatur County | | 1 hr. std. N.A.[2] | | |
| Delaware County | | 1 hr. std. N.A.[2] | | |
| Dubois County | | 1 hr. std. N.A.[2] | | |
| Fayette County | | 1 hr. std. N.A.[2] | | |
| Fountain County | | 1 hr. std. N.A.[2] | | |
| Franklin County | | 1 hr. std. N.A.[2] | | |
| Fulton County | | 1 hr. std. N.A.[2] | | |
| Gibson County | | 1 hr. std. N.A.[2] | | |
| Grant County | | 1 hr. std. N.A.[2] | | |
| Greene County | | 1 hr. std. N.A.[2] | | |
| Hamilton County | | 1 hr. std. N.A.[2] | | |
| Hancock County | | 1 hr. std. N.A.[2] | | |
| Harrison County | | 1 hr. std. N.A.[2] | | |
| Hendricks County | | 1 hr. std. N.A.[2] | | |
| Henry County | | 1 hr. std. N.A.[2] | | |
| Howard County | | 1 hr. std. N.A.[2] | | |
| Huntington County | | 1 hr. std. N.A.[2] | | |
| Jackson County | | 1 hr. std. N.A.[2] | | |
| Jasper County | | 1 hr. std. N.A.[2] | | |
| Jay County | | 1 hr. std. N.A.[2] | | |
| Jefferson County | | 1 hr. std. N.A.[2] | | |
| Jennings County | | 1 hr. std. N.A.[2] | | |
| Johnson County | | 1 hr. std. N.A.[2] | | |
| Knox County | | 1 hr. std. N.A.[2] | | |
| Kosciusko County | | 1 hr. std. N.A.[2] | | |
| Lagrange County | | 1 hr. std. N.A.[2] | | |
| Lawrence County | | 1 hr. std. N.A.[2] | | |
| Madison County | | 1 hr. std. N.A.[2] | | |
| Marshall County | | 1 hr. std. N.A.[2] | | |
| Martin County | | 1 hr. std. N.A.[2] | | |
| Miami County | | 1 hr. std. N.A.[2] | | |
| Monroe County | | 1 hr. std. N.A.[2] | | |
| Montgomery County | | 1 hr. std. N.A.[2] | | |
| Morgan County | | 1 hr. std. N.A.[2] | | |
| Newton County | | 1 hr. std. N.A.[2] | | |
| Noble County | | 1 hr. std. N.A.[2] | | |
| Ohio County | | 1 hr. std. N.A.[2] | | |
| Orange County | | 1 hr. std. N.A.[2] | | |
| Owen County | | 1 hr. std. N.A.[2] | | |
| Parke County | | 1 hr. std. N.A.[2] | | |
| Perry County | | 1 hr. std. N.A.[2] | | |
| Pike County | | 1 hr. std. N.A.[2] | | |
| Posey County | | 1 hr. std. N.A.[2] | | |
| Pulaski County | | 1 hr. std. N.A.[2] | | |
| Putnam County | | 1 hr. std. N.A.[2] | | |

INDIANA-OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Randolph County | | 1 hr. std. N.A.[2] | | |
| Ripley County | | 1 hr. std. N.A.[2] | | |
| Rush County | | 1 hr. std. N.A.[2] | | |
| Scott County | | 1 hr. std. N.A.[2] | | |
| Shelby County | | 1 hr. std. N.A.[2] | | |
| Spencer County | | 1 hr. std. N.A.[2] | | |
| Starke County | | 1 hr. std. N.A.[2] | | |
| Steuben County | | 1 hr. std. N.A.[2] | | |
| Sullivan County | | 1 hr. std. N.A.[2] | | |
| Switzerland County | | 1 hr. std. N.A.[2] | | |
| Tippecanoe County | | 1 hr. std. N.A.[2] | | |
| Tipton County | | 1 hr. std. N.A.[2] | | |
| Union County | | 1 hr. std. N.A.[2] | | |
| Vermillion County | | 1 hr. std. N.A.[2] | | |
| Vigo County | | 1 hr. std. N.A.[2] | | |
| Wabash County | | 1 hr. std. N.A.[2] | | |
| Warren County | | 1 hr. std. N.A.[2] | | |
| Washington County | | 1 hr. std. N.A.[2] | | |
| Wayne County | | 1 hr. std. N.A.[2] | | |
| Wells County | | 1 hr. std. N.A.[2] | | |
| White County | | 1 hr. std. N.A.[2] | | |
| Whitley County | | 1 hr. std. N.A.[2] | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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17. In § 81.316, the table entitled ''Iowa—Ozone'' is revised to read as follows:

**§ 81.316 Iowa.**

* * * * * * *

IOWA—OZONE (1-HOUR STANDARD)

| Designation area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Statewide | | 1 hr. std. N.A.[2] | | |
| Adair County | | | | |
| Adams County | | | | |
| Allamakee County | | | | |
| Appanoose County | | | | |
| Audubon County | | | | |
| Benton County | | | | |
| Black Hawk County | | | | |
| Boone County | | | | |
| Bremer County | | | | |
| Buchanan County | | | | |
| Buena Vista County | | | | |
| Butler County | | | | |
| Calhoun County | | | | |
| Carroll County | | | | |
| Cass County | | | | |
| Cedar County | | | | |
| Cerro Gordo County | | | | |
| Cherokee County | | | | |
| Chickasaw County | | | | |
| Clarke County | | | | |
| Clay County | | | | |
| Clayton County | | | | |
| Clinton County | | | | |
| Crawford County | | | | |
| Dallas County | | | | |
| Davis County | | | | |
| Decatur County | | | | |
| Delaware County | | | | |
| Des Moines County | | | | |
| Dickinson County | | | | |
| Dubuque County | | | | |
| Emmet County | | | | |

IOWA—OZONE (1-HOUR STANDARD)—Continued

| Designation area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Fayette County | | | | |
| Floyd County | | | | |
| Franklin County | | | | |
| Fremont County | | | | |
| Greene County | | | | |
| Grundy County | | | | |
| Guthrie County | | | | |
| Hamilton County | | | | |
| Hancock County | | | | |
| Hardin County | | | | |
| Harrison County | | | | |
| Henry County | | | | |
| Howard County | | | | |
| Humboldt County | | | | |
| Ida County | | | | |
| Iowa County | | | | |
| Jackson County | | | | |
| Jasper County | | | | |
| Jefferson County | | | | |
| Johnson County | | | | |
| Jones County | | | | |
| Keokuk County | | | | |
| Kossuth County | | | | |
| Lee County | | | | |
| Linn County | | | | |
| Louisa County | | | | |
| Lucas County | | | | |
| Lyon County | | | | |
| Madison County | | | | |
| Mahaska County | | | | |
| Marion County | | | | |
| Marshall County | | | | |
| Mills County | | | | |
| Mitchell County | | | | |
| Monona County | | | | |
| Monroe County | | | | |
| Montgomery County | | | | |
| Muscatine County | | | | |
| O'Brien County | | | | |
| Osceola County | | | | |
| Page County | | | | |
| Palo Alto County | | | | |
| Plymouth County | | | | |
| Pocahontas County | | | | |
| Polk County | | | | |
| Pottawattamie County | | | | |
| Poweshiek County | | | | |
| Ringgold County | | | | |
| Sac County | | | | |
| Scott County | | | | |
| Shelby County | | | | |
| Sioux County | | | | |
| Story County | | | | |
| Tama County | | | | |
| Taylor County | | | | |
| Union County | | | | |
| Van Buren County | | | | |
| Wapello County | | | | |
| Warren County | | | | |
| Washington County | | | | |
| Wayne County | | | | |
| Webster County | | | | |
| Winnebago County | | | | |
| Winneshiek County | | | | |
| Woodbury County | | | | |
| Worth County | | | | |
| Wright County | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * * * *

4. In § 81.317, the table entitled ''Kansas—Ozone'' is revised to read as follows:

**§ 81.317 Kansas.**

* * * * * * *

KANSAS—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Kansas City Area: | | | | |
| Johnson County | 7/23/92 | Attainment. | | |
| Wyandotte County | 7/23/92 | Attainment. | | |
| Allen County | | 1 hr. std. N.A.[2] | | |
| Anderson County | | 1 hr. std. N.A.[2] | | |
| Atchison County | | 1 hr. std. N.A.[2] | | |
| Barber County | | 1 hr. std. N.A.[2] | | |
| Barton County | | 1 hr. std. N.A.[2] | | |
| Bourbon County | | 1 hr. std. N.A.[2] | | |
| Brown County | | 1 hr. std. N.A.[2] | | |
| Butler County | | 1 hr. std. N.A.[2] | | |
| Chase County | | 1 hr. std. N.A.[2] | | |
| Chautauqua County | | 1 hr. std. N.A.[2] | | |
| Cherokee County | | 1 hr. std. N.A.[2] | | |
| Cheyenne County | | 1 hr. std. N.A.[2] | | |
| Clark County | | 1 hr. std. N.A.[2] | | |
| Clay County | | 1 hr. std. N.A.[2] | | |
| Cloud County | | 1 hr. std. N.A.[2] | | |
| Coffey County | | 1 hr. std. N.A.[2] | | |
| Comanche County | | 1 hr. std. N.A.[2] | | |
| Cowley County | | 1 hr. std. N.A.[2] | | |
| Crawford County | | 1 hr. std. N.A.[2] | | |
| Decatur County | | 1 hr. std. N.A.[2] | | |
| Dickinson County | | 1 hr. std. N.A.[2] | | |
| Doniphan County | | 1 hr. std. N.A.[2] | | |
| Douglas County | | 1 hr. std. N.A.[2] | | |
| Edwards County | | 1 hr. std. N.A.[2] | | |
| Elk County | | 1 hr. std. N.A.[2] | | |
| Ellis County | | 1 hr. std. N.A.[2] | | |
| Ellsworth County | | 1 hr. std. N.A.[2] | | |
| Finney County | | 1 hr. std. N.A.[2] | | |
| Ford County | | 1 hr. std. N.A.[2] | | |
| Franklin County | | 1 hr. std. N.A.[2] | | |
| Geary County | | 1 hr. std. N.A.[2] | | |
| Gove County | | 1 hr. std. N.A.[2] | | |
| Graham County | | 1 hr. std. N.A.[2] | | |
| Grant County | | 1 hr. std. N.A.[2] | | |
| Gray County | | 1 hr. std. N.A.[2] | | |
| Greeley County | | 1 hr. std. N.A.[2] | | |
| Greenwood County | | 1 hr. std. N.A.[2] | | |
| Hamilton County | | 1 hr. std. N.A.[2] | | |
| Harper County | | 1 hr. std. N.A.[2] | | |
| Harvey County | | 1 hr. std. N.A.[2] | | |
| Haskell County | | 1 hr. std. N.A.[2] | | |
| Hodgeman County | | 1 hr. std. N.A.[2] | | |
| Jackson County | | 1 hr. std. N.A.[2] | | |
| Jefferson County | | 1 hr. std. N.A.[2] | | |
| Jewell County | | 1 hr. std. N.A.[2] | | |
| Kearny County | | 1 hr. std. N.A.[2] | | |
| Kingman County | | 1 hr. std. N.A.[2] | | |
| Kiowa County | | 1 hr. std. N.A.[2] | | |
| Labette County | | 1 hr. std. N.A.[2] | | |
| Lane County | | 1 hr. std. N.A.[2] | | |
| Leavenworth County | | 1 hr. std. N.A.[2] | | |
| Lincoln County | | 1 hr. std. N.A.[2] | | |
| Linn County | | 1 hr. std. N.A.[2] | | |
| Logan County | | 1 hr. std. N.A.[2] | | |
| Lyon County | | 1 hr. std. N.A.[2] | | |
| Marion County | | 1 hr. std. N.A.[2] | | |
| Marshall County | | 1 hr. std. N.A.[2] | | |
| McPherson County | | 1 hr. std. N.A.[2] | | |
| Meade County | | 1 hr. std. N.A.[2] | | |
| Miami County | | 1 hr. std. N.A.[2] | | |
| Mitchell County | | 1 hr. std. N.A.[2] | | |
| Montgomery County | | 1 hr. std. N.A.[2] | | |

KANSAS—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Morris County | | 1 hr. std. N.A.[2] | | |
| Morton County | | 1 hr. std. N.A.[2] | | |
| Nemaha County | | 1 hr. std. N.A.[2] | | |
| Neosho County | | 1 hr. std. N.A.[2] | | |
| Ness County | | 1 hr. std. N.A.[2] | | |
| Norton County | | 1 hr. std. N.A.[2] | | |
| Osage County | | 1 hr. std. N.A.[2] | | |
| Osborne County | | 1 hr. std. N.A.[2] | | |
| Ottawa County | | 1 hr. std. N.A.[2] | | |
| Pawnee County | | 1 hr. std. N.A.[2] | | |
| Phillips County | | 1 hr. std. N.A.[2] | | |
| Pottawatomie County | | 1 hr. std. N.A.[2] | | |
| Pratt County | | 1 hr. std. N.A.[2] | | |
| Rawlins County | | 1 hr. std. N.A.[2] | | |
| Reno County | | 1 hr. std. N.A.[2] | | |
| Republic County | | 1 hr. std. N.A.[2] | | |
| Rice County | | 1 hr. std. N.A.[2] | | |
| Riley County | | 1 hr. std. N.A.[2] | | |
| Rooks County | | 1 hr. std. N.A.[2] | | |
| Rush County | | 1 hr. std. N.A.[2] | | |
| Russell County | | 1 hr. std. N.A.[2] | | |
| Saline County | | 1 hr. std. N.A.[2] | | |
| Scott County | | 1 hr. std. N.A.[2] | | |
| Sedgwick County | | 1 hr. std. N.A.[2] | | |
| Seward County | | 1 hr. std. N.A.[2] | | |
| Shawnee County | | 1 hr. std. N.A.[2] | | |
| Sheridan County | | 1 hr. std. N.A.[2] | | |
| Sherman County | | 1 hr. std. N.A.[2] | | |
| Smith County | | 1 hr. std. N.A.[2] | | |
| Stafford County | | 1 hr. std. N.A.[2] | | |
| Stanton County | | 1 hr. std. N.A.[2] | | |
| Stevens County | | 1 hr. std. N.A.[2] | | |
| Sumner County | | 1 hr. std. N.A.[2] | | |
| Thomas County | | 1 hr. std. N.A.[2] | | |
| Trego County | | 1 hr. std. N.A.[2] | | |
| Wabaunsee County | | 1 hr. std. N.A.[2] | | |
| Wallace County | | 1 hr. std. N.A.[2] | | |
| Washington County | | 1 hr. std. N.A.[2] | | |
| Wichita County | | 1 hr. std. N.A.[2] | | |
| Wilson County | | 1 hr. std. N.A.[2] | | |
| Woodson County | | 1 hr. std. N.A.[2] | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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19. In § 81.318, the table entitled ''Kentucky—Ozone'' is revised to read as follows:

**§ 81.318 Kentucky.**

* * * * *

KENTUCKY—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Cincinnati-Hamilton Area: | | | | |
| Boone County | 11/15/90 | Nonattainment | 11/15/90 | Moderate. |
| Campbell County | 11/15/90 | Nonattainment | 11/15/90 | Moderate. |
| Kenton County | 11/15/90 | Nonattainment | 11/15/90 | Moderate. |
| Edmonson County Area: | | | | |
| Edmonson County | | 1 hr. std. N.A.[2] | | |
| Louisville Area: | | | | |
| Bullitt County (part) | 11/15/90 | Nonattainment | 11/15/90 | Moderate. |

KENTUCKY—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| The area boundary is as follows: Beginning at the intersection of Ky 1020 and the Jefferson-Bullitt County Line proceeding to the east along the county line to the intersection of county road 567 and the Jefferson-Bullitt County Line; proceeding south on county road 567 to the junction with Ky 1116 (also known as Zoneton Road); proceeding to the south on Ky 1116 to the junction with Hebron Lane; proceeding to the south on Hebron Lane to Cedar Creek; proceeding south on Cedar Creek to the confluence of Floyds Fork turning southeast along a creek that meets Ky 44 at Stallings Cemetery; proceeding west along Ky 44 to the eastern most point in the Shepherdsville city limits; proceeding south along the Shepherdsville city limits to the Salt River and west to a point across the river from Mooney Lane; proceeding south along Mooney Lane to the junction of Ky 480; proceeding west on Ky 480 to the junction with Ky 2237; proceeding south on Ky 2237 to the junction with Ky 61 and proceeding north on Ky 61 to the junction with Ky 1494; proceeding south on Ky 1494 to the junction with the perimeter of the Fort Knox Military Reservation; proceeding north along the military reservation perimeter to Castleman Branch Road; proceeding north on Castleman Branch Road to Ky 44; proceeding a very short distance west on Ky 44 to a junction with Ky 2723; proceeding north on Ky 2723 to the junction of Chillicoop Road; proceeding northeast on Chillicoop Road to the junction of KY 2673; proceeding north on KY 2673 to the junction of KY 1020; proceeding north on KY 1020 to the beginning; unless a road or intersection of two or more roads defines the nonattainment boundary, the area shall extend outward 750 feet from the center of the road or intersection. | | | | |
| Jefferson County | 11/15/90 | Nonattainment | 11/15/90 | Moderate. |
| Oldham County (part) | 11/15/90 | Nonattainment | 11/15/90 | Moderate. |

KENTUCKY—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| The area boundary is as follows: Beginning at the intersection of the Oldham-Jefferson County Line with the southbound lane of Intestate 71; proceeding to the northeast along the southbound lane of Interstate 71 to the intersection of Ky 329 and the southbound lane of Interstate 71; proceeding to the northwest on Ky 329 to the intersection of Zaring Road and Ky 329; proceeding to the east-northeast on Zaring Road to the junction of Cedar Point Road and Zaring Road; proceeding to the north-northeast on Cedar Point Road to the junction of Ky 393 and Cedar Point Road; proceeding to the south-southeast on Ky 393 to the junction of (the access road on the north side of Reformatory Lake and the Reformatory); proceeding to the east-northeast on the access road to the junction with Dawkins Lane and the access road; proceeding to follow an electric power line east-northeast across from the junction of county road 746 and Dawkins Lane to the east-northeast across Ky 53 on to the La Grange Water Filtration Plant; proceeding on to the east-southeast along the power line then south across Fort Pickens Road to a power substation on Ky 146; proceeding along the power line south across Ky 146 and the Seaboard System Railroad track to adjoin the incorporated city limits of La Grange; then proceeding east then south along the La Grange city limits to a point abutting the north side of Ky 712; proceeding east-southeast on Ky 712 to the junction of Massie School Road and Ky 712; proceeding to the south-southwest on Massie School Road to the intersection of Massie School Road and Zale Smith Road; proceeding northeast on Zale Smith Road to the junction of KY 53 and Zale Smith Road; proceeding on Ky 53 to the north-northwest to the junction of New Moody Lane and Ky 53; proceeding on New Moody Lane to the south-southwest until meeting the city limits of La Grange; then briefly proceeding north following the La Grange city limits to the intersection of the northbound lane of Interstate 71 and the La Grange city limits; proceeding southwest on the north-bound lane of Interstate 71 until intersecting with the North Fork of Currys Fork; proceeding south-southwest beyond the confluence of Currys Fork to the south-southwest beyond the confluence of Floyds Fork continuing on to the Oldham-Jefferson County Line; proceeding northwest along the Oldham-Jefferson County Line to the beginning; unless a road or intersection of two or more roads defines the nonattainment boundary, the area shall extend outward 750 feet from the center of the road or intersection. | | | | |
| Owensboro Area: | | | | |
| Daviess County | ..... | 1 hr. std. N.A.[2] | | |
| Hancock County | ..... | 1 hr. std. N.A.[2] | | |
| The area boundary is as follows: Beginning at the Intersection of U.S. 60 and the Hancock-Daviess County Line; proceeding east along U.S. 60 to the intersection of Yellow Creek and U.S. 60; proceeding north and west along Yellow Creek to the confluence of the Ohio River; proceeding west along the Ohio River to the confluence of Blackford Creek; proceeding south and east along Blackford Creek to the beginning. | | | | |
| Morgan County Area: | | | | |
| Morgan County | 11/15/90 | Unclassifiable/Attainment | 11/15/90 | |

KENTUCKY—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Adair County | | 1 hr. std. N.A.[2] | | |
| Allen County | | 1 hr. std. N.A.[2] | | |
| Anderson County | | 1 hr. std. N.A.[2] | | |
| Ballard County | | 1 hr. std. N.A.[2] | | |
| Barren County | | 1 hr. std. N.A.[2] | | |
| Bath County | | 1 hr. std. N.A.[2] | | |
| Bell County | | 1 hr. std. N.A.[2] | | |
| Bourbon County | | 1 hr. std. N.A.[2] | | |
| Boyd County | | 1 hr. std. N.A.[2] | | |
| Boyle County | | 1 hr. std. N.A.[2] | | |
| Bracken County | | 1 hr. std. N.A.[2] | | |
| Breathitt County | | 1 hr. std. N.A.[2] | | |
| Breckinridge County | | 1 hr. std. N.A.[2] | | |
| Bullitt County (part): | | | | |
| Remainder of County | | 1 hr. std. N.A.[2] | | |
| Butler County | | 1 hr. std. N.A.[2] | | |
| Caldwell County | | 1 hr. std. N.A.[2] | | |
| Calloway County | | 1 hr. std. N.A.[2] | | |
| Carlisle County | | 1 hr. std. N.A.[2] | | |
| Carroll County | | 1 hr. std. N.A.[2] | | |
| Carter County | | 1 hr. std. N.A.[2] | | |
| Casey County | | 1 hr. std. N.A.[2] | | |
| Christian County | | 1 hr. std. N.A.[2] | | |
| Clark County | | 1 hr. std. N.A.[2] | | |
| Clay County | | 1 hr. std. N.A.[2] | | |
| Clinton County | | 1 hr. std. N.A.[2] | | |
| Crittenden County | | 1 hr. std. N.A.[2] | | |
| Cumberland County | | 1 hr. std. N.A.[2] | | |
| Elliott County | | 1 hr. std. N.A.[2] | | |
| Estill County | | 1 hr. std. N.A.[2] | | |
| Fayette County | | 1 hr. std. N.A.[2] | | |
| Fleming County | | 1 hr. std. N.A.[2] | | |
| Floyd County | | 1 hr. std. N.A.[2] | | |
| Franklin County | | 1 hr. std. N.A.[2] | | |
| Fulton County | | 1 hr. std. N.A.[2] | | |
| Gallatin County | | 1 hr. std. N.A.[2] | | |
| Garrard County | | 1 hr. std. N.A.[2] | | |
| Grant County | | 1 hr. std. N.A.[2] | | |
| Graves County | | 1 hr. std. N.A.[2] | | |
| Grayson County | | 1 hr. std. N.A.[2] | | |
| Green County | | 1 hr. std. N.A.[2] | | |
| Greenup County | | 1 hr. std. N.A.[2] | | |
| Hancock County (part): | | | | |
| Remainder of County | | 1 hr. std. N.A.[2] | | |
| Hardin County | | 1 hr. std. N.A.[2] | | |
| Harlan County | | 1 hr. std. N.A.[2] | | |
| Harrison County | | 1 hr. std. N.A.[2] | | |
| Hart County | | 1 hr. std. N.A.[2] | | |
| Henderson County | | 1 hr. std. N.A.[2] | | |
| Henry County | | 1 hr. std. N.A.[2] | | |
| Hickman County | | 1 hr. std. N.A.[2] | | |
| Hopkins County | | 1 hr. std. N.A.[2] | | |
| Jackson County | | 1 hr. std. N.A.[2] | | |
| Jessamine County | | 1 hr. std. N.A.[2] | | |
| Johnson County | | 1 hr. std. N.A.[2] | | |
| Knott County | | 1 hr. std. N.A.[2] | | |
| Knox County | | 1 hr. std. N.A.[2] | | |
| Larue County | | 1 hr. std. N.A.[2] | | |
| Laurel County | | 1 hr. std. N.A.[2] | | |
| Lawrence County | | 1 hr. std. N.A.[2] | | |
| Lee County | | 1 hr. std. N.A.[2] | | |
| Leslie County | | 1 hr. std. N.A.[2] | | |
| Letcher County | | 1 hr. std. N.A.[2] | | |
| Lewis County | | 1 hr. std. N.A.[2] | | |
| Lincoln County | | 1 hr. std. N.A.[2] | | |
| Livingston County | | 1 hr. std. N.A.[2] | | |
| Logan County | | 1 hr. std. N.A.[2] | | |
| Lyon County | | 1 hr. std. N.A.[2] | | |
| Madison County | | 1 hr. std. N.A.[2] | | |
| Magoffin County | | 1 hr. std. N.A.[2] | | |

KENTUCKY—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Marion County | | 1 hr. std. N.A.[2] | | |
| Marshall County | | 1 hr. std. N.A.[2] | | |
| Martin County | | 1 hr. std. N.A.[2] | | |
| Mason County | | 1 hr. std. N.A.[2] | | |
| McCracken County | | 1 hr. std. N.A.[2] | | |
| McCreary County | | 1 hr. std. N.A.[2] | | |
| McLean County | | 1 hr. std. N.A.[2] | | |
| Meade County | | 1 hr. std. N.A.[2] | | |
| Menifee County | | 1 hr. std. N.A.[2] | | |
| Mercer County | | 1 hr. std. N.A.[2] | | |
| Metcalfe County | | 1 hr. std. N.A.[2] | | |
| Monroe County | | 1 hr. std. N.A.[2] | | |
| Montgomery County | | 1 hr. std. N.A.[2] | | |
| Muhlenberg County | | 1 hr. std. N.A.[2] | | |
| Nelson County | | 1 hr. std. N.A.[2] | | |
| Nicholas County | | 1 hr. std. N.A.[2] | | |
| Ohio County | | 1 hr. std. N.A.[2] | | |
| Oldham County (part): | | | | |
| Remainder of County | | 1 hr. std. N.A.[2] | | |
| Owen County | | 1 hr. std. N.A.[2] | | |
| Owsley County | | 1 hr. std. N.A.[2] | | |
| Pendleton County | | 1 hr. std. N.A.[2] | | |
| Perry County | | 1 hr. std. N.A.[2] | | |
| Pike County | | 1 hr. std. N.A.[2] | | |
| Powell County | | 1 hr. std. N.A.[2] | | |
| Pulaski County | | 1 hr. std. N.A.[2] | | |
| Robertson County | | 1 hr. std. N.A.[2] | | |
| Rockcastle County | | 1 hr. std. N.A.[2] | | |
| Rowan County | | 1 hr. std. N.A.[2] | | |
| Russell County | | 1 hr. std. N.A.[2] | | |
| Scott County | | 1 hr. std. N.A.[2] | | |
| Shelby County | | 1 hr. std. N.A.[2] | | |
| Simpson County | | 1 hr. std. N.A.[2] | | |
| Spencer County | | 1 hr. std. N.A.[2] | | |
| Taylor County | | 1 hr. std. N.A.[2] | | |
| Todd County | | 1 hr. std. N.A.[2] | | |
| Trigg County | | 1 hr. std. N.A.[2] | | |
| Trimble County | | 1 hr. std. N.A.[2] | | |
| Union County | | 1 hr. std. N.A.[2] | | |
| Warren County | | 1 hr. std. N.A.[2] | | |
| Washington County | | 1 hr. std. N.A.[2] | | |
| Wayne County | | 1 hr. std. N.A.[2] | | |
| Webster County | | 1 hr. std. N.A.[2] | | |
| Whitley County | | 1 hr. std. N.A.[2] | | |
| Wolfe County | | 1 hr. std. N.A.[2] | | |
| Woodford County | | 1 hr. std. N.A.[2] | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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4. In § 81.319, the table entitled ''Louisiana—Ozone'' is revised to read as follows:

**§ 81.319 Louisiana.**

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LOUISIANA—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Baton Rouge Area: | | | | |
| Ascension Parish | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| East Baton Rouge Parish | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Iberville Parish | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Livingston Parish | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| West Baton Rouge Parish | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Beauregard Parish Area: | | | | |
| Beauregard Parish | | 1 hr. std. N.A.[2] | | |
| Grant Parish Area: | | | | |

LOUISIANA—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Grant Parish | | 1 hr. std. N.A.[2] | | |
| Lafayette Area: | | | | |
| Lafayette Parish | | 1 hr. std. N.A.[2] | | |
| Lafourche Parish Area: | | | | |
| Lafourche Parish | 1/05/98 | Nonattainment | 1/05/98 | Incomplete Data |
| Lake Charles Area: | | | | |
| Calcasieu Parish | | 1 hr. std. N.A.[2] | | |
| New Orleans Area: | | | | |
| Jefferson Parish | | 1 hr. std. N.A.[2] | | |
| Orleans Parish | | 1 hr. std. N.A.[2] | | |
| St. Bernard Parish | | 1 hr. std. N.A.[2] | | |
| St. Charles Parish | | 1 hr. std. N.A.[2] | | |
| Pointe Coupee Area: | | | | |
| Pointe Coupee Parish | | 1 hr. std. N.A.[2] | | |
| St. James Parish Area: | | | | |
| St. James Parish | | 1 hr. std. N.A.[2] | | |
| St. Mary Parish Area: | | | | |
| St. Mary Parish | | 1 hr. std. N.A.[2] | | |
| AQCR 019 Monroe-El Dorado Interstate | | 1 hr. std. N.A.[2] | | |
| Caldwell Parish | | | | |
| Catahoula Parish | | | | |
| Concordia Parish | | | | |
| East Carroll Parish | | | | |
| Franklin Parish | | | | |
| La Salle Parish | | | | |
| Madison Parish | | | | |
| Morehouse Parish | | | | |
| Ouachita Parish | | | | |
| Richland Parish | | | | |
| Tensas Parish | | | | |
| Union Parish | | | | |
| West Carroll Parish | | | | |
| AQCR 022 Shreveport-Texarkana-Tyler Inters. | | 1 hr. std. N.A.[2] | | |
| Bienville Parish | | | | |
| Bossier Parish | | | | |
| Caddo Parish | | | | |
| Claiborne Parish | | | | |
| De Soto Parish | | | | |
| Jackson Parish | | | | |
| Lincoln Parish | | | | |
| Natchitoches Parish | | | | |
| Red River Parish | | | | |
| Sabine Parish | | | | |
| Webster Parish | | | | |
| Winn Parish | | | | |
| AQCR 106 S. Louisiana-S.E. Texas Interstate | | 1 hr. std. N.A.[2] | | |
| St. John The Baptist Parish | | | | |
| AQCR 106 S. Louisiana-S.E. Texas Interstate | | 1 hr. std. N.A.[2] | | |
| Acadia Parish | | | | |
| Allen Parish | | | | |
| Assumption Parish | | | | |
| Avoyelles Parish | | | | |
| Cameron Parish | | | | |
| East Feliciana Parish | | | | |
| Evangeline Parish | | | | |
| Iberia Parish | | | | |
| Jefferson Davis Parish | | | | |
| Plaquemines Parish | | | | |
| Rapides Parish | | | | |
| St. Helena Parish | | | | |
| St. Landry Parish | | | | |
| St. Martin Parish | | | | |
| St. Tammany Parish | | | | |
| Tangipahoa Parish | | | | |
| Terrebonne Parish | | | | |
| Vermilion Parish | | | | |
| Vernon Parish | | | | |
| Washington Parish | | | | |
| West Feliciana Parish | | | | |

[1] This date is March 17, 1998, unless otherwise noted.

[2] 1 hour standard Not Applicable.

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21. In § 81.320, the table entitled ''Maine—Ozone'' is revised to read as follows:

**§ 81.320 Maine.**

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MAINE—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Franklin County Area: | | | | |
| Franklin County (part) | | 1 hr. std. N.A.[3] | | |
| Hancock County and Waldo County Area: | | | | |
| Hancock County | | 1 hr. std. N.A.[3] | | |
| Waldo County | | 1 hr. std. N.A.[3] | | |
| Knox County and Lincoln County Area: | | | | |
| Knox County | | 1 hr. std. N.A.[3] | | |
| Lincoln County | | 1 hr. std. N.A.[3] | | |
| Lewiston-Auburn Area: | | | | |
| Androscoggin County | | 1 hr. std. N.A.[3] | | |
| Kennebec County | | 1 hr. std. N.A.[3] | | |
| Oxford County Area: | | | | |
| Oxford County (part) | | 1 hr. std. N.A.[3] | | |
| Portland Area: | | | | |
| Cumberland County | 11/15/90 | Nonattainment | 11/15/90 | Moderate.[2] |
| Sagadahoc County | 11/15/90 | Nonattainment | 11/15/90 | Moderate.[2] |
| York County | 11/15/90 | Nonattainment | 11/15/90 | Moderate.[2] |
| Somerset County Area: | | | | |
| Somerset County (part) | | 1 hr. std. N.A.[3] | | |
| AQCR 108 Aroostook Intrastate | | 1 hr. std. N.A.[3] | | |
| Aroostook County (part) see 40 CFR 81.179 | | | | |
| AQCR 109 Down East Intrastate | | 1 hr. std. N.A.[3] | | |
| Penobscot County (part), as described under 40 CFR 81.181. | | | | |
| Piscataquis County (part) see 40 CFR 81.181 | | | | |
| Washington County | | | | |
| AQCR 111 Northwest Maine Intrastate | | 1 hr. std. N.A.[3] | | |
| (Remainder of) see 40 CFR 81.182 | | | | |
| Aroostook County | | | | |
| Franklin County (part) | | | | |
| Oxford County (part) | | | | |
| Penobscot County (part) | | | | |
| Piscataquis County (part) | | | | |
| Somerset County (part) | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] Attainment date extended to November 15, 1997.
[3] 1 hour standard Not Applicable.

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22. In § 81.321, the table entitled ''Maryland—Ozone'' is revised to read as follows:

**§ 81.321 Maryland.**

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MARYLAND—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Baltimore Area: | | | | |
| Anne Arundel County | 11/15/90 | Nonattainment | 11/15/90 | Severe-15. |
| City of Baltimore | 11/15/90 | Nonattainment | 11/15/90 | Severe-15. |
| Baltimore County | 11/15/90 | Nonattainment | 11/15/90 | Severe-15. |
| Carroll County | 11/15/90 | Nonattainment | 11/15/90 | Severe-15. |
| Harford County | 11/15/90 | Nonattainment | 11/15/90 | Severe-15. |
| Howard County | 11/15/90 | Nonattainment | 11/15/90 | Severe-15. |
| Kent County and Queen Anne's County Area: | | | | |
| Kent County | 1/6/92 | Nonattainment | 1/6/92 | Marginal. |

MARYLAND—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Queen Anne's County | 1/6/92 | Nonattainment | 1/6/92 | Marginal. |
| Philadelphia-Wilmington-Trenton Area: | | | | |
| Cecil County | 11/15/90 | Nonattainment | 11/15/90 | Severe-15. |
| Washington, DC Area: | | | | |
| Calvert County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Charles County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Frederick County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Montgomery County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Prince George's County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| AQCR 113 Cumberland-Keyser Interstate | | 1 hr. std. N.A.[2] | | |
| Allegany County | | | | |
| Garrett County | | | | |
| Washington County | | | | |
| AQCR 114 Eastern Shore Interstate (Remainder of) | | 1 hr. std. N.A.[2] | | |
| Caroline County | | | | |
| Dorchester County | | | | |
| Somerset County | | | | |
| Talbot County | | | | |
| Wicomico County | | | | |
| Worcester County | | | | |
| AQCR 116 Southern Maryland Intrastate (Remainder of) | | 1 hr. std. N.A.[2] | | |
| St. Mary's County | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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23. In § 81.322, the table entitled ''Massachusetts—Ozone'' is revised to read as follows:

**§ 81.322 Massachusetts.**

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MASSACHUSETTS—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Boston-Lawrence-Worcester (E. Mass) Area: | | | | |
| Barnstable County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Bristol County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Dukes County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Essex County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Middlesex County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Nantucket County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Norfolk County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Plymouth County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Suffolk County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Worcester County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Springfield (W. Mass) Area: | | | | |
| Berkshire County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Franklin County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Hampden County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Hampshire County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |

[1] This date is March 17, 1998, unless otherwise noted.

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24. In § 81.323, the table entitled ''Michigan—Ozone'' is revised to read as follows:

**§ 81.323 Michigan.**

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MICHIGAN—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Allegan County Area: | | | | |
| Allegan County | 11/15/90 | Nonattainment | 11/15/90 | Incomplete Data. |

MICHIGAN—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Barry County Area: | | | | |
| Barry County | | 1 hr. std. N.A.[2] | | |
| Battle Creek Area: | | | | |
| Calhoun County | | 1 hr. std. N.A.[2] | | |
| Benton Harbor Area: | | | | |
| Berrien County | | 1 hr. std. N.A.[2] | | |
| Branch County Area: | | | | |
| Branch County | | 1 hr. std. N.A.[2] | | |
| Cass County Area: | | | | |
| Cass County | | 1 hr. std. N.A.[2] | | |
| Detroit-Ann Arbor Area: | | | | |
| Livingston County | 4/6/95 | Attainment. | | |
| Macomb County | 4/6/95 | Attainment. | | |
| Monroe County | 4/6/95 | Attainment. | | |
| Oakland County | 4/6/95 | Attainment. | | |
| St. Clair County | 4/6/95 | Attainment. | | |
| Washtenaw County | 4/6/95 | Attainment. | | |
| Wayne County | 4/6/95 | Attainment. | | |
| Flint Area: | | | | |
| Genesee County | | 1 hr. std. N.A.[2] | | |
| Grand Rapids Area: | | | | |
| Kent County | 6/21/96 | Attainment. | | |
| Ottawa County | 6/21/96 | Attainment. | | |
| Gratiot County Area: | | | | |
| Gratiot County | | 1 hr. std. N.A.[2] | | |
| Hillsdale County Area: | | | | |
| Hillsdale County | | 1 hr. std. N.A.[2] | | |
| Huron County Area: | | | | |
| Huron County | | 1 hr. std. N.A.[2] | | |
| Ionia County Area: | | | | |
| Ionia County | | 1 hr. std. N.A.[2] | | |
| Jackson Area: | | | | |
| Jackson County | | 1 hr. std. N.A.[2] | | |
| Kalamazoo Area: | | | | |
| Kalamazoo County | | 1 hr. std. N.A.[2] | | |
| Lansing-East Lansing Area: | | | | |
| Clinton County | | 1 hr. std. N.A.[2] | | |
| Eaton County | | 1 hr. std. N.A.[2] | | |
| Ingham County | | 1 hr. std. N.A.[2] | | |
| Lapeer County Area: | | | | |
| Lapeer County | | 1 hr. std. N.A.[2] | | |
| Lenawee County Area: | | | | |
| Lenawee County | | 1 hr. std. N.A.[2] | | |
| Mason County Area: | | | | |
| Mason County | 11/15/90 | Unclassifiable/Attainment | 11/15/90 | |
| Montcalm Area: | | | | |
| Montcalm County | | 1 hr. std. N.A.[2] | | |
| Muskegon Area: | | | | |
| Muskegon County | 11/15/90 | Nonattainment | 11/15/90 | Moderate. |
| Saginaw-Bay City-Midland Area: | | | | |
| Bay County | | 1 hr. std. N.A.[2] | | |
| Midland County | | 1 hr. std. N.A.[2] | | |
| Saginaw County | | 1 hr. std. N.A.[2] | | |
| Sanilac County Area: | | | | |
| Sanilac County | | 1 hr. std. N.A.[2] | | |
| Shiawassee County Area: | | | | |
| Shiawassee County | | 1 hr. std. N.A.[2] | | |
| St. Joseph County Area: | | | | |
| St. Joseph County | | 1 hr. std. N.A.[2] | | |
| Tuscola County Area: | | | | |
| Tuscola County | | 1 hr. std. N.A.[2] | | |
| Van Buren County Area: | | | | |
| Van Buren County | | 1 hr. std. N.A.[2] | | |
| AQCR 122 Central Michigan Intrastate (Remainder of) | | 1 hr. std. N.A.[2] | | |
| Arenac County | | | | |
| Clare County | | | | |
| Gladwin County | | | | |
| Iosco County | | | | |
| Isabella County | | | | |
| Lake County | | | | |

MICHIGAN—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Mecosta County | | | | |
| Newaygo County | | | | |
| Oceana County | | | | |
| Ogemaw County | | | | |
| Osceola County | | | | |
| Roscommon County | | | | |
| AQCR 126 Upper Michigan Intrastate (part): | | | | |
| Marquette County | | 1 hr. std. N.A.[2] | | |
| AQCR 126 Upper Michigan Intrastate (Remainder of) | | 1 hr. std. N.A.[2] | | |
| Alcona County | | | | |
| Alger County | | | | |
| Alpena County | | | | |
| Antrim County | | | | |
| Baraga County | | | | |
| Benzie County | | | | |
| Charlevoix County | | | | |
| Cheboygan County | | | | |
| Chippewa County | | | | |
| Crawford County | | | | |
| Delta County | | | | |
| Dickinson County | | | | |
| Emmet County | | | | |
| Gogebic County | | | | |
| Grand Traverse County | | | | |
| Houghton County | | | | |
| Iron County | | | | |
| Kalkaska County | | | | |
| Keweenaw County | | | | |
| Leelanau County | | | | |
| Luce County | | | | |
| Mackinac County | | | | |
| Manistee County | | | | |
| Menominee County | | | | |
| Missaukee County | | | | |
| Montmorency County | | | | |
| Ontonagon County | | | | |
| Oscoda County | | | | |
| Otsego County | | | | |
| Presque Isle County | | | | |
| Schoolcraft County | | | | |
| Wexford County | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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25. In § 81.324, the table entitled ''Minnesota—Ozone'' is revised to read as follows:

**§ 81.324 Minnesota.**

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MINNESOTA—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Minneapolis-Saint Paul Area: | | | | |
| Anoka County | | 1 hr. std. N.A.[2] | | |
| Carver County | | 1 hr. std. N.A.[2] | | |
| Dakota County | | 1 hr. std. N.A.[2] | | |
| Hennepin County | | 1 hr. std. N.A.[2] | | |
| Ramsey County | | 1 hr. std. N.A.[2] | | |
| Scott County | | 1 hr. std. N.A.[2] | | |
| Washington County | | 1 hr. std. N.A.[2] | | |
| Aitkin County | | 1 hr. std. N.A.[2] | | |
| Becker County | | 1 hr. std. N.A.[2] | | |
| Beltrami County | | 1 hr. std. N.A.[2] | | |
| Benton County | | 1 hr. std. N.A.[2] | | |
| Big Stone County | | 1 hr. std. N.A.[2] | | |
| Blue Earth County | | 1 hr. std. N.A.[2] | | |

MINNESOTA—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Brown County | | 1 hr. std. N.A.[2] | | |
| Carlton County | | 1 hr. std. N.A.[2] | | |
| Cass County | | 1 hr. std. N.A.[2] | | |
| Chippewa County | | 1 hr. std. N.A.[2] | | |
| Chisago County | | 1 hr. std. N.A.[2] | | |
| Clay County | | 1 hr. std. N.A.[2] | | |
| Clearwater County | | 1 hr. std. N.A.[2] | | |
| Cook County | | 1 hr. std. N.A.[2] | | |
| Cottonwood County | | 1 hr. std. N.A.[2] | | |
| Crow Wing County | | 1 hr. std. N.A.[2] | | |
| Dodge County | | 1 hr. std. N.A.[2] | | |
| Douglas County | | 1 hr. std. N.A.[2] | | |
| Faribault County | | 1 hr. std. N.A.[2] | | |
| Fillmore County | | 1 hr. std. N.A.[2] | | |
| Freeborn County | | 1 hr. std. N.A.[2] | | |
| Goodhue County | | 1 hr. std. N.A.[2] | | |
| Grant County | | 1 hr. std. N.A.[2] | | |
| Houston County | | 1 hr. std. N.A.[2] | | |
| Hubbard County | | 1 hr. std. N.A.[2] | | |
| Isanti County | | 1 hr. std. N.A.[2] | | |
| Itasca County | | 1 hr. std. N.A.[2] | | |
| Jackson County | | 1 hr. std. N.A.[2] | | |
| Kanabec County | | 1 hr. std. N.A.[2] | | |
| Kandiyohi County | | 1 hr. std. N.A.[2] | | |
| Kittson County | | 1 hr. std. N.A.[2] | | |
| Koochiching County | | 1 hr. std. N.A.[2] | | |
| Lac qui Parle County | | 1 hr. std. N.A.[2] | | |
| Lake County | | 1 hr. std. N.A.[2] | | |
| Lake of the Woods County | | 1 hr. std. N.A.[2] | | |
| Le Sueur County | | 1 hr. std. N.A.[2] | | |
| Lincoln County | | 1 hr. std. N.A.[2] | | |
| Lyon County | | 1 hr. std. N.A.[2] | | |
| Mahnomen County | | 1 hr. std. N.A.[2] | | |
| Marshall County | | 1 hr. std. N.A.[2] | | |
| Martin County | | 1 hr. std. N.A.[2] | | |
| McLeod County | | 1 hr. std. N.A.[2] | | |
| Meeker County | | 1 hr. std. N.A.[2] | | |
| Mille Lacs County | | 1 hr. std. N.A.[2] | | |
| Morrison County | | 1 hr. std. N.A.[2] | | |
| Mower County | | 1 hr. std. N.A.[2] | | |
| Murray County | | 1 hr. std. N.A.[2] | | |
| Nicollet County | | 1 hr. std. N.A.[2] | | |
| Nobles County | | 1 hr. std. N.A.[2] | | |
| Norman County | | 1 hr. std. N.A.[2] | | |
| Olmsted County | | 1 hr. std. N.A.[2] | | |
| Otter Tail County | | 1 hr. std. N.A.[2] | | |
| Pennington County | | 1 hr. std. N.A.[2] | | |
| Pine County | | 1 hr. std. N.A.[2] | | |
| Pipestone County | | 1 hr. std. N.A.[2] | | |
| Polk County | | 1 hr. std. N.A.[2] | | |
| Pope County | | 1 hr. std. N.A.[2] | | |
| Red Lake County | | 1 hr. std. N.A.[2] | | |
| Redwood County | | 1 hr. std. N.A.[2] | | |
| Renville County | | 1 hr. std. N.A.[2] | | |
| Rice County | | 1 hr. std. N.A.[2] | | |
| Rock County | | 1 hr. std. N.A.[2] | | |
| Roseau County | | 1 hr. std. N.A.[2] | | |
| Saint Louis County | | 1 hr. std. N.A.[2] | | |
| Sherburne County | | 1 hr. std. N.A.[2] | | |
| Sibley County | | 1 hr. std. N.A.[2] | | |
| Stearns County | | 1 hr. std. N.A.[2] | | |
| Steele County | | 1 hr. std. N.A.[2] | | |
| Stevens County | | 1 hr. std. N.A.[2] | | |
| Swift County | | 1 hr. std. N.A.[2] | | |
| Todd County | | 1 hr. std. N.A.[2] | | |
| Traverse County | | 1 hr. std. N.A.[2] | | |
| Wabasha County | | 1 hr. std. N.A.[2] | | |
| Wadena County | | 1 hr. std. N.A.[2] | | |
| Waseca County | | 1 hr. std. N.A.[2] | | |
| Watonwan County | | 1 hr. std. N.A.[2] | | |

MINNESOTA—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Wilkin County | | 1 hr. std. N.A.[2] | | |
| Winona County | | 1 hr. std. N.A.[2] | | |
| Wright County | | 1 hr. std. N.A.[2] | | |
| Yellow Medicine County | | 1 hr. std. N.A.[2] | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * * * *

26. In Section 81.325, the table entitled ''Mississippi—Ozone'' is revised to read as follows:

**§ 81.325 Mississippi.**

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MISSISSIPPI—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Memphis: | | | | |
| DeSota County | 11/15/90 | Unclassifiable/Attainment | 11/15/90 | |
| Rest of State | | 1 hr. std. N.A.[2] | | |
| Adams County | | | | |
| Alcorn County | | | | |
| Amite County | | | | |
| Attala County | | | | |
| Benton County | | | | |
| Bolivar County | | | | |
| Calhoun County | | | | |
| Carroll County | | | | |
| Chickasaw County | | | | |
| Choctaw County | | | | |
| Claiborne County | | | | |
| Clarke County | | | | |
| Clay County | | | | |
| Coahoma County | | | | |
| Copiah County | | | | |
| Covington County | | | | |
| Forrest County | | | | |
| Franklin County | | | | |
| George County | | | | |
| Greene County | | | | |
| Grenada County | | | | |
| Hancock County | | | | |
| Harrison County | | | | |
| Hinds County | | | | |
| Holmes County | | | | |
| Humphreys County | | | | |
| Issaquena County | | | | |
| Itawamba County | | | | |
| Jackson County | | | | |
| Jasper County | | | | |
| Jefferson County | | | | |
| Jefferson Davis County | | | | |
| Jones County | | | | |
| Kemper County | | | | |
| Lafayette County | | | | |
| Lamar County | | | | |
| Lauderdale County | | | | |
| Lawrence County | | | | |
| Leake County | | | | |
| Lee County | | | | |
| Leflore County | | | | |
| Lincoln County | | | | |
| Lowndes County | | | | |
| Madison County | | | | |
| Marion County | | | | |
| Marshall County | | | | |
| Monroe County | | | | |
| Montgomery County | | | | |

MISSISSIPPI—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Neshoba County | | | | |
| Newton County | | | | |
| Noxubee County | | | | |
| Oktibbeha County | | | | |
| Panola County | | | | |
| Pearl River County | | | | |
| Perry County | | | | |
| Pike County | | | | |
| Pontotoc County | | | | |
| Prentiss County | | | | |
| Quitman County | | | | |
| Rankin County | | | | |
| Scott County | | | | |
| Sharkey County | | | | |
| Simpson County | | | | |
| Smith County | | | | |
| Stone County | | | | |
| Sunflower County | | | | |
| Tallahatchie County | | | | |
| Tate County | | | | |
| Tippah County | | | | |
| Tishomingo County | | | | |
| Tunica County | | | | |
| Union County | | | | |
| Walthall County | | | | |
| Warren County | | | | |
| Washington County | | | | |
| Wayne County | | | | |
| Webster County | | | | |
| Wilkinson County | | | | |
| Winston County | | | | |
| Yalobusha County | | | | |
| Yazoo County | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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27. In § 81.326, the table entitled ''Missouri—Ozone'' is revised to read as follows:

**§ 81.326 Missouri.**

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MISSOURI—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Kansas City Area: | | | | |
| Clay County | 7/23/92 | Attainment. | | |
| Jackson County | 7/23/92 | Attainment. | | |
| Platte County | 7/23/92 | Attainment. | | |
| St. Louis Area: | | | | |
| Franklin County | 11/15/90 | Nonattainment | 11/15/90 | Moderate. |
| Jefferson County | 11/15/90 | Nonattainment | 11/15/90 | Moderate. |
| St. Charles County | 11/15/90 | Nonattainment | 11/15/90 | Moderate. |
| St. Louis | 11/15/90 | Nonattainment | 11/15/90 | Moderate. |
| St. Louis County | 11/15/90 | Nonattainment | 11/15/90 | Moderate. |
| AQCR 094 Metro Kansas City Interstate (Remainder of) | | 1 hr. std. N.A.[2] | | |
| Buchanan County | | | | |
| Cass County | | | | |
| Ray County | | | | |
| AQCR 137 N. Missouri Intrastate (part): | | | | |
| Pike County | | 1 hr. std. N.A.[2] | | |
| Ralls County | | 1 hr. std. N.A.[2] | | |
| AQCR 137 N. Missouri Intrastate (Remainder of) | | 1 hr. std. N.A.[2] | | |
| Adair County | | | | |
| Andrew County | | | | |
| Atchison County | | | | |
| Audrain County | | | | |

MISSOURI—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Boone County | | | | |
| Caldwell County | | | | |
| Callaway County | | | | |
| Carroll County | | | | |
| Chariton County | | | | |
| Clark County | | | | |
| Clinton County | | | | |
| Cole County | | | | |
| Cooper County | | | | |
| Daviess County | | | | |
| De Kalb County | | | | |
| Gentry County | | | | |
| Grundy County | | | | |
| Harrison County | | | | |
| Holt County | | | | |
| Howard County | | | | |
| Knox County | | | | |
| Lewis County | | | | |
| Lincoln County | | | | |
| Linn County | | | | |
| Livingston County | | | | |
| Macon County | | | | |
| Marion County | | | | |
| Mercer County | | | | |
| Moniteau County | | | | |
| Monroe County | | | | |
| Montgomery County | | | | |
| Nodaway County | | | | |
| Osage County | | | | |
| Putnam County | | | | |
| Randolph County | | | | |
| Saline County | | | | |
| Schuyler County | | | | |
| Scotland County | | | | |
| Shelby County | | | | |
| Sullivan County | | | | |
| Warren County | | | | |
| Worth County | | | | |
| Rest of State | ..... | 1 hr. std. N.A.[2] | | |
| Barry County | | | | |
| Barton County | | | | |
| Bates County | | | | |
| Benton County | | | | |
| Bollinger County | | | | |
| Butler County | | | | |
| Camden County | | | | |
| Cape Girardeau County | | | | |
| Carter County | | | | |
| Cedar County | | | | |
| Christian County | | | | |
| Crawford County | | | | |
| Dade County | | | | |
| Dallas County | | | | |
| Dent County | | | | |
| Douglas County | | | | |
| Dunklin County | | | | |
| Gasconade County | | | | |
| Greene County | | | | |
| Henry County | | | | |
| Hickory County | | | | |
| Howell County | | | | |
| Iron County | | | | |
| Jasper County | | | | |
| Johnson County | | | | |
| Laclede County | | | | |
| Lafayette County | | | | |
| Lawrence County | | | | |
| Madison County | | | | |
| Maries County | | | | |
| McDonald County | | | | |

MISSOURI—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Miller County | | | | |
| Mississippi County | | | | |
| Morgan County | | | | |
| New Madrid County | | | | |
| Newton County | | | | |
| Oregon County | | | | |
| Ozark County | | | | |
| Pemiscot County | | | | |
| Perry County | | | | |
| Pettis County | | | | |
| Phelps County | | | | |
| Polk County | | | | |
| Pulaski County | | | | |
| Reynolds County | | | | |
| Ripley County | | | | |
| Scott County | | | | |
| Shannon County | | | | |
| St. Clair County | | | | |
| St. Francois County | | | | |
| Ste. Genevieve County | | | | |
| Stoddard County | | | | |
| Stone County | | | | |
| Taney County | | | | |
| Texas County | | | | |
| Vernon County | | | | |
| Washington County | | | | |
| Wayne County | | | | |
| Webster County | | | | |
| Wright County | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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28. In § 81.327, the table entitled ''Montana—Ozone'' is revised to read as follows:

**§ 81.327 Montana.**

* * * * * * *

MONTANA—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Beaverhead County | | 1 hr. std. N.A. | | |
| Big Horn County (part) excluding Crow, Northern Cheyenne Indian Reservations. | | 1 hr. std. N.A.[2] | | |
| Blaine County (part) excluding Fort Belknap Indian Reservation. | | 1 hr. std. N.A.[2] | | |
| Broadwater County | | 1 hr. std. N.A.[2] | | |
| Carbon County | | 1 hr. std. N.A.[2] | | |
| Carter County | | 1 hr. std. N.A.[2] | | |
| Cascade County | | 1 hr. std. N.A.[2] | | |
| Chouteau County (part) excluding Rocky Boy Indian Reservation. | | 1 hr. std. N.A.[2] | | |
| Custer County | | 1 hr. std. N.A.[2] | | |
| Daniels County (part) excluding Fort Peck Indian Reservation. | | 1 hr. std. N.A.[2] | | |
| Dawson County | | 1 hr. std. N.A.[2] | | |
| Deer Lodge County | | 1 hr. std. N.A.[2] | | |
| Fallon County | | 1 hr. std. N.A.[2] | | |
| Fergus County | | 1 hr. std. N.A.[2] | | |
| Flathead County (part) excluding Flathead Indian Reservation. | | 1 hr. std. N.A.[2] | | |
| Gallatin County | | 1 hr. std. N.A.[2] | | |
| Garfield County | | 1 hr. std. N.A.[2] | | |
| Glacier County (part) excluding Blackfeet Indian Reservation | | 1 hr. std. N.A.[2] | | |
| Golden Valley County | | 1 hr. std. N.A.[2] | | |
| Granite County | | 1 hr. std. N.A.[2] | | |
| Hill County (part) excluding Rocky Boy Indian Reservation | | 1 hr. std. N.A.[2] | | |

MONTANA—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Jefferson County | | 1 hr. std. N.A.[2] | | |
| Judith Basin County | | 1 hr. std. N.A.[2] | | |
| Lake County (part) excluding Flathead Indian Reservation | | 1 hr. std. N.A.[2] | | |
| Lewis and Clark County | | 1 hr. std. N.A.[2] | | |
| Liberty County | | 1 hr. std. N.A.[2] | | |
| Lincoln County | | 1 hr. std. N.A.[2] | | |
| Madison County | | 1 hr. std. N.A.[2] | | |
| McCone County | | 1 hr. std. N.A.[2] | | |
| Meagher County | | 1 hr. std. N.A.[2] | | |
| Mineral County | | 1 hr. std. N.A.[2] | | |
| Missoula County (part) excluding Flathead Indian Reservation. | | 1 hr. std. N.A.[2] | | |
| Musselshell County | | 1 hr. std. N.A.[2] | | |
| Park County | | 1 hr. std. N.A.[2] | | |
| Petroleum County | | 1 hr. std. N.A.[2] | | |
| Phillips County (part) excluding Fort Belknap Indian Reservation. | | 1 hr. std. N.A.[2] | | |
| Pondera County (part) excluding Blackfeet Indian Reservation. | | 1 hr. std. N.A.[2] | | |
| Powder River County | | 1 hr. std. N.A.[2] | | |
| Powell County | | 1 hr. std. N.A.[2] | | |
| Prairie County | | 1 hr. std. N.A.[2] | | |
| Ravalli County | | 1 hr. std. N.A.[2] | | |
| Richland County | | 1 hr. std. N.A.[2] | | |
| Roosevelt County (part) excluding Fort Peck Indian Reservation. | | 1 hr. std. N.A.[2] | | |
| Rosebud County (part) excluding Northern Cheyenne Indian Reservation. | | 1 hr. std. N.A.[2] | | |
| Sanders County (part) excluding Flathead Indian Reservation. | | 1 hr. std. N.A.[2] | | |
| Sheridan County (part) excluding Fort Peck Indian Reservation. | | 1 hr. std. N.A.[2] | | |
| Silver Bow County | | 1 hr. std. N.A.[2] | | |
| Stillwater County | | 1 hr. std. N.A.[2] | | |
| Sweet Grass County | | 1 hr. std. N.A.[2] | | |
| Teton County | | 1 hr. std. N.A.[2] | | |
| Toole County | | 1 hr. std. N.A.[2] | | |
| Treasure County | | 1 hr. std. N.A.[2] | | |
| Valley County (part) excluding Fort Peck Indian Reservation | | 1 hr. std. N.A.[2] | | |
| Wheatland County | | 1 hr. std. N.A.[2] | | |
| Wibaux County | | 1 hr. std. N.A.[2] | | |
| Yellowstone County (part) excluding Crow Indian Reservation. | | 1 hr. std. N.A.[2] | | |
| Yellowstone Natl Park | | 1 hr. std. N.A.[2] | | |
| Blackfeet Indian Reservation | | 1 hr. std. N.A.[2] | | |
| Glacier County (part) area inside Blackfeet Reservation | | | | |
| Pondera County (part) area inside Blackfeet Reservation | | | | |
| Crow Indian Reservation | | 1 hr. std. N.A.[2] | | |
| Bighorn County (part) area inside Crow Reservation | | | | |
| Yellowstone (part) area inside Crow Reservation | | | | |
| Flathead Indian Reservation | | 1 hr. std. N.A.[2] | | |
| Flathead County (part) area inside Flathead Reservation | | | | |
| Lake County (part) area inside Flathead Reservation | | | | |
| Missoula County (part) area inside Flathead Reservation | | | | |
| Sanders County (part) area inside Flathead Reservation | | | | |
| Fort Belknap Indian Reservation | | 1 hr. std. N.A.[2] | | |
| Blaine County (part) area inside Fort Belknap Reservation | | | | |
| Phillips County (part) area inside Fort Belknap Reservation | | | | |
| Fort Peck Indian Reservation | | 1 hr. std. N.A.[2] | | |
| Daniels County (part) area inside Fort Peck Reservation | | | | |
| Roosevelt County (part) area inside Fort Peck Reservation | | | | |
| Sheridan County (part) area inside Fort Peck Reservation | | | | |
| Valley County (part) area inside Fort Peck Reservation | | | | |
| Northern Cheyenne Indian Reservation | | 1 hr. std. N.A.[2] | | |
| Bighorn County (part) area inside Northern Cheyenne Reservation | | | | |

MONTANA—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Rosebud County (part) area inside Northern Cheyenne Reservation | | | | |
| Rocky Boy Indian Reservation | ..... | 1 hr. std. N.A.[2] | | |
| Chouteau County (part) area inside Rocky Boy Reservation | | | | |
| Hill County (part) area inside Rocky Boy Reservation | | | | |
| . | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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29. In § 81.328, the table entitled ''Nebraska—Ozone'' is revised to read as follows:

**§ 81.328 Nebraska.**

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NEBRASKA—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Statewide | ..... | 1 hr. std. N.A.[2] | | |
| Adams County | | | | |
| Antelope County | | | | |
| Arthur County | | | | |
| Banner County | | | | |
| Blaine County | | | | |
| Boone County | | | | |
| Box Butte County | | | | |
| Boyd County | | | | |
| Brown County | | | | |
| Buffalo County | | | | |
| Burt County | | | | |
| Butler County | | | | |
| Cass County | | | | |
| Cedar County | | | | |
| Chase County | | | | |
| Cherry County | | | | |
| Cheyenne County | | | | |
| Clay County | | | | |
| Colfax County | | | | |
| Cuming County | | | | |
| Custer County | | | | |
| Dakota County | | | | |
| Dawes County | | | | |
| Dawson County | | | | |
| Deuel County | | | | |
| Dixon County | | | | |
| Dodge County | | | | |
| Douglas County | | | | |
| Dundy County | | | | |
| Fillmore County | | | | |
| Franklin County | | | | |
| Frontier County | | | | |
| Furnas County | | | | |
| Gage County | | | | |
| Garden County | | | | |
| Garfield County | | | | |
| Gosper County | | | | |
| Grant County | | | | |
| Greeley County | | | | |
| Hall County | | | | |
| Hamilton County | | | | |
| Harlan County | | | | |
| Hayes County | | | | |
| Hitchcock County | | | | |
| Holt County | | | | |
| Hooker County | | | | |
| Howard County | | | | |

NEBRASKA—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Jefferson County | | | | |
| Johnson County | | | | |
| Kearney County | | | | |
| Keith County | | | | |
| Keya Paha County | | | | |
| Kimball County | | | | |
| Knox County | | | | |
| Lancaster County | | | | |
| Lincoln County | | | | |
| Logan County | | | | |
| Loup County | | | | |
| Madison County | | | | |
| McPherson County | | | | |
| Merrick County | | | | |
| Morrill County | | | | |
| Nance County | | | | |
| Nemaha County | | | | |
| Nuckolls County | | | | |
| Otoe County | | | | |
| Pawnee County | | | | |
| Perkins County | | | | |
| Phelps County | | | | |
| Pierce County | | | | |
| Platte County | | | | |
| Polk County | | | | |
| Red Willow County | | | | |
| Richardson County | | | | |
| Rock County | | | | |
| Saline County | | | | |
| Sarpy County | | | | |
| Saunders County | | | | |
| Scotts Bluff County | | | | |
| Seward County | | | | |
| Sheridan County | | | | |
| Sherman County | | | | |
| Sioux County | | | | |
| Stanton County | | | | |
| Thayer County | | | | |
| Thomas County | | | | |
| Thurston County | | | | |
| Valley County | | | | |
| Washington County | | | | |
| Wayne County | | | | |
| Webster County | | | | |
| Wheeler County | | | | |
| York County | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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30. In § 81.329, the table entitled ''Nevada—Ozone'' is revised to read as follows:

**§ 81.329 Nevada.**

* * * * * * *

NEVADA—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Reno Area | | 1 hr. std. N.A.[2] | | |
| Washoe County | | | | |
| Rest of State | | 1 hr. std. N.A.[2] | | |
| Carson City | | | | |
| Churchill County | | | | |
| Clark County | | | | |
| Douglas County | | | | |
| Elko County | | | | |
| Esmeralda County | | | | |

NEVADA—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Eureka County | | | | |
| Humboldt County | | | | |
| Lander County | | | | |
| Lincoln County | | | | |
| Lyon County | | | | |
| Mineral County | | | | |
| Nye County | | | | |
| Pershing County | | | | |
| Storey County | | | | |
| White Pine County | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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31. In § 81.330, the table entitled ''New Hampshire—Ozone'' is revised to read as follows:

**§ 81.330 New Hampshire.**

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NEW HAMPSHIRE—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Belknap County Area: | | | | |
| Belknap County | ..... | 1 hr. std. N.A.[2] | | |
| Boston-Lawrence-Worcester Area: | | | | |
| Hillsborough County (part) | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Pelham Town, Amherst Town, Brookline Town, Hollis Town, Hudson Town, Litchfield Town, Merrimack Town, Milford Town, Mont Vernon Town, Nashua City, Wilton Town. | | | | |
| Rockingham County (part) | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Atkinson Town, Brentwood Town, Danville Town, Derry Town, E. Kingston Town, Hampstead Town, Hampton Falls Town, Kensington Town, Kingston Town, Londonderry Town, Newton Town, Plaistow Town, Salem Town, Sandown Town, Seabrook Town, South Hampton Town, Windham Town. | | | | |
| Cheshire County Area: | | | | |
| Cheshire County | ..... | 1 hr. std. N.A.[2] | | |
| Manchester Area: | | | | |
| Hillsborough County (part) | ..... | 1 hr. std. N.A.[2] | | |
| Antrim Town, Bedford Town, Bennington Town, Deering Town, Francestown Town, Goffstown Town, Greenfield Town, Greenville Town, Hancock Town, Hillsborough Town, Lyndeborough Town, Manchester city, Mason Town, New Boston Town, New Ipswich Town, Petersborough Town, Sharon Town, Temple town, Weare Town, Windsor Town. | | | | |
| Merrimack County | ..... | 1 hr. std. N.A.[2] | ..... | |
| Rockingham County (part) | ..... | 1 hr. std. N.A.[2] | | |
| Auburn Town, Candia Town, Chester Town, Deerfield Town, Epping Town, Fremont Town, Northwood Town, Nottingham Town, Raymond Town. | | | | |
| Portsmouth-Dover-Rochester Area: | | | | |
| Rockingham County (part) | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Exeter Town, Greenland Town, Hampton Town, New Castle Town, Newfields Town, Newington Town, Newmarket Town, North Hampton Town, Portsmouth City, Rye Town, Stratham Town. | | | | |
| Strafford County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Sullivan County Area: | | | | |
| Sullivan County | ..... | 1 hr. std. N.A.[2] | | |
| AQCR 107 Androscoggin Valley Interstate: | | | | |
| Coos County | ..... | 1 hr. std. N.A.[2] | | |
| AQCR 149 Central New Hampshire Interstate: | | | | |

NEW HAMPSHIRE—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Carroll County | | 1 hr. std. N.A.[2] | | |
| Grafton County | | 1 hr. std. N.A.[2] | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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32. In § 81.331, the table entitled ''New Jersey—Ozone'' is revised to read as follows:

**§ 81.331 New Jersey.**

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NEW JERSEY—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Allentown-Bethlehem Easton Area: | | | | |
| Warren County | | 1 hr. std. N.A.[2] | | |
| Atlantic City Area: | | | | |
| Atlantic County | | 1 hr. std. N.A.[2] | | |
| Cape May County | | 1 hr. std. N.A.[2] | | |
| New York-N. New Jersey-Long Island Area: | | | | |
| Bergen County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Essex County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Hudson County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Hunterdon County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Middlesex County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Monmouth County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Morris County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Ocean County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Passaic County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Somerset County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Sussex County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Union County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Philadelphia-Wilmington-Trenton Area: | | | | |
| Burlington County | 11/15/90 | Nonattainment | 11/15/90 | Severe-15. |
| Camden County | 11/15/90 | Nonattainment | 11/15/90 | Severe-15. |
| Cumberland County | 11/15/90 | Nonattainment | 11/15/90 | Severe-15. |
| Gloucester County | 11/15/90 | Nonattainment | 11/15/90 | Severe-15. |
| Mercer County | 11/15/90 | Nonattainment | 11/15/90 | Severe-15. |
| Salem County | 11/15/90 | Nonattainment | 11/15/90 | Severe-15. |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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33. In § 81.332, the table entitled ''New Mexico—Ozone'' is revised to read as follows:

**§ 81.332 New Mexico.**

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NEW MEXICO—OZONE (1-HOUR STANDARD)

| Designation area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| AQCR 012 New Mexico-Southern Border Intrastate | | 1 hr. std. N.A.[2] | | |
| Grant County | | | | |
| Hidalgo County | | | | |
| Luna County | | | | |
| AQCR 014 Four Corners Interstate | | 1 hr. std. N.A.[2] | | |
| see 40 CFR 81.121 | | | | |
| McKinley County (part) | | | | |
| Rio Arriba County (part) | | | | |
| San Juan County | | | | |
| Sandoval County (part) | | | | |
| Valencia County (part) | | | | |
| AQCR 152 Albuquerque-Mid Rio Grande Intrastate | | 1 hr. std. N.A.[2] | | |

NEW MEXICO—OZONE (1-HOUR STANDARD)—Continued

| Designation area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Bernalillo County (part) | | | | |
| AQCR 152 Albuquerque-Mid Rio Grande | | 1 hr. std. N.A.[2] | | |
| Sandoval County (part) see 40 CFR 81.83 | | | | |
| Valencia County see 40 CFR 81.83 | | | | |
| AQCR 153 El Paso-Las Cruces-Alamogordo | 7/12/95 | Nonattainment | 7/12/95 | Marginal. |
| Dona Ana County (part)-(Sunland Park Area) The area bounded by the New Mexico-Texas State line on the east, the New Mexico-Mexico international line on the south, Range 3E-Range 2E, line on the west, and the N3200 latitude line on the north | | | | |
| Dona Ana County (remainder of) | | 1 hr. std. N.A.[2] | | |
| Lincoln County | | 1 hr. std. N.A.[2] | | |
| Otero County | | 1 hr. std. N.A.[2] | | |
| Sierra County. | | 1 hr. std. N.A.[2] | | |
| AQCR 154 Northeastern Plains Intrastate | | 1 hr. std. N.A.[2] | | |
| Colfax County | | | | |
| Guadalupe County | | | | |
| Harding County | | | | |
| Mora County | | | | |
| San Miguel County | | | | |
| Torrance County | | | | |
| Union County | | | | |
| AQCR 155 Pecos-Permian Basin Intrastate | | 1 hr. std. N.A.[2] | | |
| Chaves County | | | | |
| Curry County | | | | |
| De Baca County | | | | |
| Eddy County | | | | |
| Lea County | | | | |
| Quay County | | | | |
| Roosevelt County | | | | |
| AQCR 156 SW Mountains-Augustine Plains | | 1 hr. std. N.A.[2] | | |
| Catron County | | | | |
| Cibola County | | | | |
| McKinley County (part) see 40 CFR 81.241 | | | | |
| Socorro County | | | | |
| Valencia County (part) see 40 CFR 81.241 | | | | |
| AQCR 157 Upper Rio Grande Valley Intrastate | | 1 hr. std. N.A.[2] | | |
| Los Alamos County | | | | |
| Rio Arriba County (part) see 40 CFR 81.239 | | | | |
| Santa Fe County | | | | |
| Taos County | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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34. In § 81.333, the table entitled ''New York—Ozone'' is revised to read as follows:

**§ 81.333 New York.**

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NEW YORK—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Albany-Schenectady-Troy Area: | | | | |
| Albany County | | 1 hr. std. N.A.[3] | | |
| Greene County | | 1 hr. std. N.A.[3] | | |
| Montgomery County | | 1 hr. std. N.A.[3] | | |
| Rensselaer County | | 1 hr. std. N.A.[3] | | |
| Saratoga County | | 1 hr. std. N.A.[3] | | |
| Schenectady County | | 1 hr. std. N.A.[3] | | |
| Buffalo-Niagara Falls Area: | | | | |
| Erie County | | 1 hr. std. N.A.[3] | | |

NEW YORK—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Niagara County | | 1 hr. std. N.A.[3] | | |
| Essex County Area: | | | | |
| Essex County (part) | | 1 hr. std. N.A.[3] | | |
| The portion of Whiteface Mountain above 4500 feet in elevation in Essex County | | | | |
| Jefferson County Area: | | | | |
| Jefferson County | | 1 hr. std. N.A.[3] | | |
| New York-Northern New Jersey-Long Island Area: | | | | |
| Bronx County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Kings County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Nassau County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| New York County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Orange County (part) | 1/15/92 | Nonattainment | 1/15/92 | Severe-17. |
| Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, and Woodbury | | | | |
| Queens County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Richmond County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Rockland County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Suffolk County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Westchester County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Poughkeepsie Area: | | | | |
| Dutchess County | 1/6/92 | Nonattainment | 11/7/94 | Moderate. |
| Orange County (remainder) | [2] 4/21/94 | Nonattainment | [2] 11/7/94 | Moderate. |
| Putnam County | 1/15/92 | Nonattainment | 11/7/94 | Moderate. |
| AQCR 158 Central New York Intrastate (Remainder of) | | 1 hr. std. N.A.[3] | | |
| Cayuga County | | | | |
| Cortland County | | | | |
| Herkimer County | | | | |
| Lewis County | | | | |
| Madison County | | | | |
| Oneida County | | | | |
| Onondaga County | | | | |
| Oswego County | | | | |
| AQCR 159 Champlain Valley Interstate (Remainder of) | | 1 hr. std. N.A.[3] | | |
| Clinton County | | | | |
| Essex County | | | | |
| Franklin County | | | | |
| Hamilton County | | | | |
| St. Lawrence County | | | | |
| Warren County | | | | |
| Washington County | | | | |
| AQCR 160 Genessee-Finger Lakes Intrastate | | 1 hr. std. N.A.[3] | | |
| Genesee County | | | | |
| Livingston County | | | | |
| Monroe County | | | | |
| Ontario County | | | | |
| Orleans County | | | | |
| Seneca County | | | | |
| Wayne County | | | | |
| Wyoming County | | | | |
| Yates County | | | | |
| AQCR 161 Hudson Valley Intrastate (Remainder of) | | 1 hr. std. N.A.[3] | | |
| Columbia County | | | | |
| Fulton County | | | | |
| Schoharie County | | | | |
| Ulster County | | | | |
| AQCR 163 Southern Tier East Intrastate | | 1 hr. std. N.A.[3] | | |
| Broome County | | | | |
| Chenango County | | | | |
| Delaware County | | | | |
| Otsego County | | | | |
| Sullivan County | | | | |
| Tioga County | | | | |
| AQCR 164 Southern Tier West Intrastate | | 1 hr. std. N.A.[3] | | |
| Allegany County | | | | |
| Cattaraugus County | | | | |
| Chautauqua County | | | | |
| Chemung County | | | | |
| Schuyler County | | | | |
| Steuben County | | | | |

NEW YORK—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Tompkins County | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] However, the effective date is November 15, 1990, for purposes of determining the scope of a ''covered area'' under section 211(k)(10)(D), opt-in under section 211(k)(6), and the baseline determination of the 15% reduction in volatile organic compounds under section 182(b)(1).
[3] 1 hour standard Not Applicable.

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35. In § 81.334, the table entitled ''North Carolina—Ozone'' is revised to read as follows:

**§ 81.334 North Carolina.**

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NORTH CAROLINA—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Statewide | ..... | 1 hr. std. N.A.[2] | | |
| Alamance County | | | | |
| Alexander County | | | | |
| Alleghany County | | | | |
| Anson County | | | | |
| Ashe County | | | | |
| Avery County | | | | |
| Beaufort County | | | | |
| Bertie County | | | | |
| Bladen County | | | | |
| Brunswick County | | | | |
| Buncombe County | | | | |
| Burke County | | | | |
| Cabarrus County | | | | |
| Caldwell County | | | | |
| Camden County | | | | |
| Carteret County | | | | |
| Caswell County | | | | |
| Catawba County | | | | |
| Chatham County | | | | |
| Cherokee County | | | | |
| Chowan County | | | | |
| Clay County | | | | |
| Cleveland County | | | | |
| Columbus County | | | | |
| Craven County | | | | |
| Cumberland County | | | | |
| Currituck County | | | | |
| Dare County | | | | |
| Davidson County | | | | |
| Davie County | | | | |
| Durham County | | | | |
| Duplin County | | | | |
| Edgecombe County | | | | |
| Forsyth County | | | | |
| Franklin County | | | | |
| Gaston County | | | | |
| Gates County | | | | |
| Graham County | | | | |
| Granville County | | | | |
| Greene County | | | | |
| Guilford County | | | | |
| Halifax County | | | | |
| Harnett County | | | | |
| Haywood County | | | | |
| Henderson County | | | | |
| Hertford County | | | | |
| Hoke County | | | | |
| Hyde County | | | | |
| Iredell County | | | | |
| Jackson County | | | | |
| Johnston County | | | | |

NORTH CAROLINA—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Jones County | | | | |
| Lee County | | | | |
| Lenoir County | | | | |
| Lincoln County | | | | |
| McDowell County | | | | |
| Macon County | | | | |
| Madison County | | | | |
| Martin County | | | | |
| Mecklenburg County | | | | |
| Mitchell County | | | | |
| Montgomery County | | | | |
| Moore County | | | | |
| Nash County | | | | |
| New Hanover County | | | | |
| Northhampton County | | | | |
| Onslow County | | | | |
| Orange County | | | | |
| Pamlico County | | | | |
| Pasquotank County | | | | |
| Pender County | | | | |
| Perquimans County | | | | |
| Person County | | | | |
| Pitt County | | | | |
| Polk County | | | | |
| Randolph County | | | | |
| Richmond County | | | | |
| Robeson County | | | | |
| Rockingham County | | | | |
| Rowan County | | | | |
| Rutherford County | | | | |
| Sampson County | | | | |
| Scotland County | | | | |
| Stanly County | | | | |
| Stokes County | | | | |
| Surry County | | | | |
| Swain County | | | | |
| Transylvania County | | | | |
| Tyrrell County | | | | |
| Union County | | | | |
| Vance County | | | | |
| Wake County | | | | |
| Warren County | | | | |
| Washington County | | | | |
| Watauga County | | | | |
| Wayne County | | | | |
| Wilkes County | | | | |
| Wilson County | | | | |
| Yadkin County | | | | |
| Yancey County | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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36. In § 81.335, the table entitled ''North Dakota—Ozone'' is revised to read as follows:

**§ 81.335 North Dakota.**

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NORTH DAKOTA—OZONE (1-HOUR STANDARD)

| Designation area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| AQCR 130 Metropolitan Fargo-Moorhead: | | | | |
| Interstate | ..... | 1 hr. std. N.A.[2] | | |
| Cass County | | | | |
| Rest of State, AQCR 172 | ..... | 1 hr. std. N.A.[2] | | |
| Adams County | | | | |
| Barnes County | | | | |

NORTH DAKOTA—OZONE (1-HOUR STANDARD)—Continued

| Designation area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Benson County | | | | |
| Billings County | | | | |
| Bottineau County | | | | |
| Bowman County | | | | |
| Burke County | | | | |
| Burleigh County | | | | |
| Cavalier County | | | | |
| Dickey County | | | | |
| Divide County | | | | |
| Dunn County | | | | |
| Eddy County | | | | |
| Emmons County | | | | |
| Foster County | | | | |
| Golden Valley County | | | | |
| Grand Forks County | | | | |
| Grant County | | | | |
| Griggs County | | | | |
| Hettinger County | | | | |
| Kidder County | | | | |
| La Moure County | | | | |
| Logan County | | | | |
| McHenry County | | | | |
| McIntosh County | | | | |
| McKenzie County | | | | |
| McLean County | | | | |
| Mercer County | | | | |
| Morton County | | | | |
| Mountrail County | | | | |
| Nelson County | | | | |
| Oliver County | | | | |
| Pembina County | | | | |
| Pierce County | | | | |
| Ramsey County | | | | |
| Ransom County | | | | |
| Renville County | | | | |
| Richland County | | | | |
| Rolette County | | | | |
| Sargent County | | | | |
| Sheridan County | | | | |
| Sioux County | | | | |
| Slope County | | | | |
| Stark County | | | | |
| Steele County | | | | |
| Stutsman County | | | | |
| Towner County | | | | |
| Traill County | | | | |
| Walsh County | | | | |
| Ward County | | | | |
| Wells County | | | | |
| Williams County | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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37. In § 81.336, the table entitled ''Ohio—Ozone'' is revised to read as follows:

**§ 81.336 Ohio.**

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OHIO—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Canton Area: | | | | |
| Stark County | ..... | 1 hr. std. N.A.[2] | | |
| Cincinnati-Hamilton Area: | | | | |
| Butler County | 11/15/90 | Nonattainment ..... | 11/15/90 | Moderate. |
| Clermont County | 11/15/90 | Nonattainment ..... | 11/15/90 | Moderate. |

OHIO—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Hamilton County | 11/15/90 | Nonattainment | 11/15/90 | Moderate. |
| Warren County | 11/15/90 | Nonattainment | 11/15/90 | Moderate. |
| Cleveland-Akron-Lorain Area: | | | | |
| Ashtabula County | | 1 hr. std. N.A.[2] | | |
| Cuyahoga County | | 1 hr. std. N.A.[2] | | |
| Geauga County | | 1 hr. std. N.A.[2] | | |
| Lake County | | 1 hr. std. N.A.[2] | | |
| Lorain County | | 1 hr. std. N.A.[2] | | |
| Medina County | | 1 hr. std. N.A.[2] | | |
| Portage County | | 1 hr. std. N.A.[2] | | |
| Summit County | | 1 hr. std. N.A.[2] | | |
| Clinton County Area: | | | | |
| Clinton County | | 1 hr. std. N.A.[2] | | |
| Columbiana County Area: | | | | |
| Columbiana County | | 1 hr. std. N.A.[2] | | |
| Columbus Area: | | | | |
| Delaware County | | 1 hr. std. N.A.[2] | | |
| Franklin County | | 1 hr. std. N.A.[2] | | |
| Licking County | | 1 hr. std. N.A.[2] | | |
| Dayton-Springfield Area: | | | | |
| Clark County | 7/5/95 | Attainment. | | |
| Greene County | 7/5/95 | Attainment. | | |
| Miami County | 7/5/95 | Attainment. | | |
| Montgomery County | 7/5/95 | Attainment. | | |
| Preble County Area: | | | | |
| Preble County | | 1 hr. std. N.A.[2] | | |
| Steubenville Area: | | | | |
| Jefferson County | | 1 hr. std. N.A.[2] | | |
| Toledo Area: | | | | |
| Lucas County | | 1 hr. std. N.A.[2] | | |
| Wood County | | 1 hr. std. N.A.[2] | | |
| Youngstown-Warren-Sharon Area: | | | | |
| Mahoning County | | 1 hr. std. N.A.[2] | | |
| Trumbull County | | 1 hr. std. N.A.[2] | | |
| Adams County | | 1 hr. std. N.A.[2] | | |
| Allen County | | 1 hr. std. N.A.[2] | | |
| Ashland County | | 1 hr. std. N.A.[2] | | |
| Athens County | | 1 hr. std. N.A.[2] | | |
| Auglaize County | | 1 hr. std. N.A.[2] | | |
| Belmont County | | 1 hr. std. N.A.[2] | | |
| Brown County | | 1 hr. std. N.A.[2] | | |
| Carroll County | | 1 hr. std. N.A.[2] | | |
| Champaign County | | 1 hr. std. N.A.[2] | | |
| Coshocton County | | 1 hr. std. N.A.[2] | | |
| Crawford County | | 1 hr. std. N.A.[2] | | |
| Darke County | | 1 hr. std. N.A.[2] | | |
| Defiance County | | 1 hr. std. N.A.[2] | | |
| Erie County | | 1 hr. std. N.A.[2] | | |
| Fairfield County | | 1 hr. std. N.A.[2] | | |
| Fayette County | | 1 hr. std. N.A.[2] | | |
| Fulton County | | 1 hr. std. N.A.[2] | | |
| Gallia County | | 1 hr. std. N.A.[2] | | |
| Guernsey County | | 1 hr. std. N.A.[2] | | |
| Hancock County | | 1 hr. std. N.A.[2] | | |
| Hardin County | | 1 hr. std. N.A.[2] | | |
| Harrison County | | 1 hr. std. N.A.[2] | | |
| Henry County | | 1 hr. std. N.A.[2] | | |
| Highland County | | 1 hr. std. N.A.[2] | | |
| Hocking County | | 1 hr. std. N.A.[2] | | |
| Holmes County | | 1 hr. std. N.A.[2] | | |
| Huron County | | 1 hr. std. N.A.[2] | | |
| Jackson County | | 1 hr. std. N.A.[2] | | |
| Knox County | | 1 hr. std. N.A.[2] | | |
| Lawrence County | | 1 hr. std. N.A.[2] | | |
| Logan County | | 1 hr. std. N.A.[2] | | |
| Madison County | | 1 hr. std. N.A.[2] | | |
| Marion County | | 1 hr. std. N.A.[2] | | |
| Meigs County | | 1 hr. std. N.A.[2] | | |
| Mercer County | | 1 hr. std. N.A.[2] | | |
| Monroe County | | 1 hr. std. N.A.[2] | | |

OHIO—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Morgan County | | 1 hr. std. N.A.[2] | | |
| Morrow County | | 1 hr. std. N.A.[2] | | |
| Muskingum County | | 1 hr. std. N.A.[2] | | |
| Noble County | | 1 hr. std. N.A.[2] | | |
| Ottawa County | | 1 hr. std. N.A.[2] | | |
| Paulding County | | 1 hr. std. N.A.[2] | | |
| Perry County | | 1 hr. std. N.A.[2] | | |
| Pickaway County | | 1 hr. std. N.A.[2] | | |
| Pike County | | 1 hr. std. N.A.[2] | | |
| Putnam County | | 1 hr. std. N.A.[2] | | |
| Richland County | | 1 hr. std. N.A.[2] | | |
| Ross County | | 1 hr. std. N.A.[2] | | |
| Sandusky County | | 1 hr. std. N.A.[2] | | |
| Scioto County | | 1 hr. std. N.A.[2] | | |
| Seneca County | | 1 hr. std. N.A.[2] | | |
| Shelby County | | 1 hr. std. N.A.[2] | | |
| Tuscarawas County | | 1 hr. std. N.A.[2] | | |
| Union County | | 1 hr. std. N.A.[2] | | |
| Van Wert County | | 1 hr. std. N.A.[2] | | |
| Vinton County | | 1 hr. std. N.A.[2] | | |
| Washington County | | 1 hr. std. N.A.[2] | | |
| Wayne County | | 1 hr. std. N.A.[2] | | |
| Williams County | | 1 hr. std. N.A.[2] | | |
| Wyandot County | | 1 hr. std. N.A.[2] | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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38. In § 81.331, the table entitled ''Oklahoma—Ozone'' is revised to read as follows:

**§ 81.337 Oklahoma.**

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OKLAHOMA—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| AQCR 017 Metropolitan Fort Smith Interstate | | 1 hr. std. N.A.[2] | | |
| Adair County | | | | |
| Cherokee County | | | | |
| Le Flore County | | | | |
| Sequoyah County | | | | |
| AQCR 022 Shreveport-Texarkana-Tyler: | | | | |
| Intrastate | | 1 hr. std. N.A.[2] | | |
| McCurtain County | | | | |
| AQCR 184 Central Oklahoma Intrastate (part) | | 1 hr. std. N.A.[2] | | |
| Cleveland County | | | | |
| Oklahoma County | | | | |
| AQCR 184 Central Oklahoma Intrastate (Remainder of) | | 1 hr. std. N.A.[2] | | |
| Canadian County | | | | |
| Grady County | | | | |
| Kingfisher County | | | | |
| Lincoln County | | | | |
| Logan County | | | | |
| McClain County | | | | |
| Pottawatomie County | | | | |
| AQCR 185 North Central Oklahoma Intrastate | | 1 hr. std. N.A.[2] | | |
| Garfield County | | | | |
| Grant County | | | | |
| Kay County | | | | |
| Noble County | | | | |
| Payne County | | | | |
| AQCR 186 Northeastern Oklahoma Intrastate. | | 1 hr. std. N.A.[2] | | |
| Craig County | | | | |
| Creek County | | | | |
| Delaware County | | | | |
| Mayes County | | | | |
| Muskogee County | | | | |

OKLAHOMA—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Nowata County | | | | |
| Okmulgee County | | | | |
| Osage County | | | | |
| Ottawa County | | | | |
| Pawnee County | | | | |
| Rogers County | | | | |
| Tulsa County | | | | |
| Wagoner County | | | | |
| Washington County | | | | |
| AQCR 187 Northwestern Oklahoma Intrastate | | 1 hr. std. N.A.[2] | | |
| Alfalfa County | | | | |
| Beaver County | | | | |
| Blaine County | | | | |
| Cimarron County | | | | |
| Custer County | | | | |
| Dewey County | | | | |
| Ellis County | | | | |
| Harper County | | | | |
| Major County | | | | |
| Roger Mills County | | | | |
| Texas County | | | | |
| Woods County | | | | |
| Woodward County | | | | |
| AQCR 188 Southeastern Oklahoma Intrastate | | 1 hr. std. N.A.[2]. | | |
| Atoka County | | | | |
| Bryan County | | | | |
| Carter County | | | | |
| Choctaw County | | | | |
| Coal County | | | | |
| Garvin County | | | | |
| Haskell County | | | | |
| Hughes County | | | | |
| Johnston County | | | | |
| Latimer County | | | | |
| Love County | | | | |
| Marshall County | | | | |
| McIntosh County | | | | |
| Murray County | | | | |
| Okfuskee County | | | | |
| Pittsburg County | | | | |
| Pontotoc County | | | | |
| Pushmataha County | | | | |
| Seminole County | | | | |
| AQCR 189 Southwestern Oklahoma Intrastate | | 1 hr. std. N.A.[2] | | |
| Beckham County | | | | |
| Caddo County | | | | |
| Comanche County | | | | |
| Cotton County | | | | |
| Greer County | | | | |
| Harmon County | | | | |
| Jackson County | | | | |
| Jefferson County | | | | |
| Kiowa County | | | | |
| Stephens County | | | | |
| Tillman County | | | | |
| Washita County | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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39. In § 81.338, the table entitled ''Oregon—Ozone'' is revised to read as follows:

**§ 81.338 Oregon.**

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OREGON—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Portland-Vancouver AQMA Area: | | | | |
| Air Quality Maintenance Area: | | | | |
| Clackamas County (part) | | 1 hr. std. N.A.[2] | | |
| Multnomah County (part) | | 1 hr. std. N.A.[2] | | |
| Washington County (part) | | 1 hr. std. N.A.[2] | | |
| Salem Area: | | | | |
| Salem Area Transportation Study: | | | | |
| Marion County (part) | | 1 hr. std. N.A.[2] | | |
| Polk County (part) | | 1 hr. std. N.A.[2] | | |
| AQCR 190 Central Oregon Intrastate (Remainder of) | | 1 hr. std. N.A.[2] | | |
| Crook County | | | | |
| Deschutes County | | | | |
| Hood River County | | | | |
| Jefferson County | | | | |
| Klamath County | | | | |
| Lake County | | | | |
| Sherman County | | | | |
| Wasco County | | | | |
| AQCR 191 Eastern Oregon Intrastate | | 1 hr. std. N.A.[2] | | |
| Baker County | | | | |
| Gilliam County | | | | |
| Grant County | | | | |
| Harney County | | | | |
| Malheur County | | | | |
| Morrow County | | | | |
| Umatilla County | | | | |
| Union County | | | | |
| Wallowa County | | | | |
| Wheeler County | | | | |
| AQCR 192 Northwest Oregon Intrastate | | 1 hr. std. N.A.[2] | | |
| Clatsop County | | | | |
| Lincoln County | | | | |
| Tillamook County | | | | |
| AQCR 193 Portland Interstate (part) | | 1 hr. std. N.A.[2] | | |
| Lane County (part) | | | | |
| Eugene Springfield Air Quality Maintenance Area | | | | |
| AQCR 193 Portland Interstate (Remainder of) | | 1 hr. std. N.A.[2] | | |
| Benton County | | | | |
| Clackamas County (part) | | | | |
| Remainder of county | | | | |
| Columbia County | | | | |
| Lane County (part) | | | | |
| Remainder of county | | | | |
| Linn County | | | | |
| Marion County (part) | | | | |
| area outside the Salem Area Transportation Study. | | | | |
| Multnomah County (part) | | | | |
| Remainder of county | | | | |
| Polk County (part) | | | | |
| area outside the Salem Area Transportation Study. | | | | |
| Washington County (part) | | | | |
| Remainder of county | | | | |
| Yamhill County | | | | |
| AQCR 194 Southwest Oregon Intrastate (part): | | | | |
| Jackson County (part): | | | | |
| Medford-Ashland Air Quality Maintenance Area | | 1 hr. std. N.A.[2] | | |
| AQCR 194 Southwest Oregon Intrastate (Remainder of) | | 1 hr. std. N.A.[2] | | |
| Coos County | | | | |
| Curry County | | | | |
| Douglas County | | | | |
| Jackson County (part) | | | | |
| Remainder of county | | | | |
| Josephine County | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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40. In § 81.339, the table entitled ''Pennsylvania—Ozone'' is revised to read as follows:

**§ 81.339 Pennsylvania.**

* * * * * * *

PENNSYLVANIA—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Type | |
|---|---|---|---|---|
| | Classification | Date[1] | Date[1] | Type |
| Allentown-Bethlehem-Easton Area: | | | | |
| Carbon County | ..... | 1 hr. std. N.A.[3] | | |
| Lehigh County | ..... | 1 hr. std. N.A.[3] | | |
| Northampton County | ..... | 1 hr. std. N.A.[3] | | |
| Altoona Area: | | | | |
| Blair County | ..... | 1 hr. std. N.A.[3] | | |
| Crawford County Area: | | | | |
| Crawford County | ..... | 1 hr. std. N.A.[3] | | |
| Erie Area: | | | | |
| Erie County | ..... | 1 hr. std. N.A.[3] | | |
| Franklin County Area: | | | | |
| Franklin County: | ..... | 1 hr. std. N.A.[3] | | |
| Greene County Area: | | | | |
| Greene County: | ..... | 1 hr. std. N.A.[3] | | |
| Harrisburg-Lebanon-Carlisle Area: | | | | |
| Cumberland County | ..... | 1 hr. std. N.A.[3] | | |
| Dauphin County | ..... | 1 hr. std. N.A.[3] | | |
| Lebanon County | ..... | 1 hr. std. N.A.[3] | | |
| Perry County | ..... | 1 hr. std. N.A.[3] | | |
| Johnstown Area: | | | | |
| Cambria County | ..... | 1 hr. std. N.A.[3] | | |
| Somerset County | ..... | 1 hr. std. N.A.[3] | | |
| Juniata County Area: | | | | |
| Juniata County | ..... | 1 hr. std. N.A.[3] | | |
| Lancaster Area: | | | | |
| Lancaster County | 11/15/90 | Nonattainment ..... | 11/15/90 | Marginal |
| Lawrence County Area: | | | | |
| Lawrence County | ..... | 1 hr.std.N.A.[3] | | |
| Northumberland County Area: | | | | |
| Northumberland County | ..... | 1 hr.std.N.A. [3] | | |
| Philadelphia-Wilmington-Trenton Area: | | | | |
| Bucks County | 11/15/90 | Nonattainment ..... | 11/15/90 | Severe-15 |
| Chester County | 11/15/90 | Nonattainment ..... | 11/15/90 | Severe-15 |
| Delaware County | 11/15/90 | Nonattainment ..... | 11/15/90 | Severe-15 |
| Montgomery County | 11/15/90 | Nonattainment ..... | 11/15/90 | Severe-15 |
| Philadelphia County | 11/15/90 | Nonattainment ..... | 11/15/90 | Severe-15 |
| Pike County Area: | | | | |
| Pike County | ..... | 1 hr.std.N.A.[3] | | |
| Pittsburgh-Beaver Valley Area: | | | | |
| Allegheny County | 11/15/90 | Nonattainment ..... | 11/15/90 | Moderate.[2] |
| Armstrong County | 11/15/90 | Nonattainment ..... | 11/15/90 | Moderate.[2] |
| Beaver County | 11/15/90 | Nonattainment ..... | 11/15/90 | Moderate.[2] |
| Butler County | 11/15/90 | Nonattainment ..... | 11/15/90 | Moderate.[2] |
| Fayette County | 11/15/90 | Nonattainment ..... | 11/15/90 | Moderate.[2] |
| Washington County | 11/15/90 | Nonattainment ..... | 11/15/90 | Moderate.[2] |
| Westmoreland County | 11/15/90 | Nonattainment ..... | 11/15/90 | Moderate.[2] |
| Reading Area: | | | | |
| Berks County | ..... | 1 hr. std. N.A.[3] | | |
| Schuylkill County Area: | | | | |
| Schuylkill County | ..... | 1 hr. std. N.A.[3] | | |
| Scranton-Wilkes-Barre Area: | | | | |
| Columbia County | ..... | 1 hr. std. N.A.[3] | | |
| Lackawanna County | ..... | 1 hr. std. N.A.[3] | | |
| Luzerne County | ..... | 1 hr. std. N.A.[3] | | |
| Monroe County | ..... | 1 hr. std. N.A.[3] | | |
| Wyoming County | ..... | 1 hr. std. N.A.[3] | | |
| Snyder County Area: | | | | |
| Snyder County | ..... | 1 hr. std. N.A.[3] | | |
| Susquehanna County Area: | | | | |
| Susquehanna County | ..... | 1 hr. std. N.A.[3] | | |
| Warren County Area: | | | | |
| Warren County | ..... | 1 hr. std. N.A.[3] | | |
| Wayne County Area: | | | | |
| Wayne County | ..... | 1 hr. std. N.A.[3] | | |
| York Area: | | | | |
| Adams County | ..... | 1 hr. std. N.A.[3] | | |
| York County | ..... | 1 hr. std. N.A.[3] | | |
| Youngstown-Warren-Sharon Area: | | | | |
| Mercer County | ..... | 1 hr. std. N.A.[3] | | |
| AQCR 151 NE Pennsylvania Intrastate (Remainder of).. | | | | |

PENNSYLVANIA—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Type | |
|---|---|---|---|---|
| | Classification | Date(1) | Date(1) | Type |
| Bradford County | ..... | 1 hr. std. N.A.[3] | | |
| Sullivan County | ..... | 1 hr. std. N.A.[3] | | |
| Tioga County | ..... | 1 hr. std. N.A.[3] | | |
| AQCR 178 NW Pennsylvania Interstate (Remainder of). | | | | |
| Cameron County | ..... | 1 hr. std. N.A.[3] | | |
| Clarion County | ..... | 1 hr. std. N.A.[3] | | |
| Clearfield County | ..... | 1 hr. std. N.A.[3] | | |
| Elk County | ..... | 1 hr. std. N.A.[3] | | |
| Forest County | ..... | 1 hr. std. N.A.[3] | | |
| Jefferson County | ..... | 1 hr. std. N.A.[3] | | |
| McKean County | ..... | 1 hr. std. N.A.[3] | | |
| Potter County | ..... | 1 hr. std. N.A.[3] | | |
| Venango County | ..... | 1 hr. std. N.A.[3] | | |
| AQCR 195 Central Pennsylvania Intrastate (Remainder of). | | | | |
| Bedford County | ..... | 1 hr. std. N.A.[3] | | |
| Centre County | ..... | 1 hr. std. N.A.[3] | | |
| Clinton County | ..... | 1 hr. std. N.A.[3] | | |
| Fulton County | ..... | 1 hr. std. N.A.[3] | | |
| Huntingdon County | ..... | 1 hr. std. N.A.[3] | | |
| Lycoming County | ..... | 1 hr. std. N.A.[3] | | |
| Mifflin County | ..... | 1 hr. std. N.A.[3] | | |
| Montour County | ..... | 1 hr. std. N.A.[3] | | |
| Union County | ..... | 1 hr. std. N.A.[3] | | |
| AQCR 197 SW Pennsylvania Intrastate (Remainder of):. | | | | |
| Indiana County | ..... | 1 hr. std. N.A.[3] | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] Attainment date extended to 11/15/97.
[3] 1 hour standard Not Applicable.

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41. In § 81.340, the table entitled ''Rhode Island—Ozone'' is revised to read as follows:

**§ 81.340 Rhode Island.**

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RHODE ISLAND—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Providence (all of RI) Area: | | | | |
| Bristol County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Kent County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Newport County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Providence County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Washington County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |

[1] This date is March 17, 1998 unless otherwise noted.

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42. In § 81.341, the table entitled ''South Carolina—Ozone'' is revised to read as follows:

**§ 81.341 South Carolina.**

* * * * * * *

SOUTH CAROLINA—OZONE (O3). (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Statewide | ..... | 1 hr. std. N.A.[2] | | |
| Abbeville County | | | | |
| Aiken County | | | | |
| Allendale County | | | | |
| Anderson County | | | | |

SOUTH CAROLINA—OZONE (O3). (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Bamberg County | | | | |
| Barnwell County | | | | |
| Beaufort County | | | | |
| Berkeley County | | | | |
| Calhoun County | | | | |
| Charleston County | | | | |
| Cherokee County | | | | |
| Chester County | | | | |
| Chesterfield County | | | | |
| Clarendon County | | | | |
| Colleton County | | | | |
| Darlington County | | | | |
| Dillon County | | | | |
| Dorchester County | | | | |
| Edgefield County | | | | |
| Fairfield County | | | | |
| Florence County | | | | |
| Georgetown County | | | | |
| Greenville County | | | | |
| Greenwood County | | | | |
| Hampton County | | | | |
| Horry County | | | | |
| Jasper County | | | | |
| Kershaw County | | | | |
| Lancaster County | | | | |
| Laurens County | | | | |
| Lee County | | | | |
| Lexington County | | | | |
| Manon County | | | | |
| Marlboro County | | | | |
| McCormick County | | | | |
| Newberry County | | | | |
| Oconee County | | | | |
| Orangeburg County | | | | |
| Pickens County | | | | |
| Richland County | | | | |
| Saloda County | | | | |
| Spartanburg County | | | | |
| Sumter County | | | | |
| Union County | | | | |
| Williamsburg County | | | | |
| York County | | | | |

[1] This date is March 17, 1998 unless otherwise noted.
[2] 1 hour standard Not Applicable.

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43. In § 81.342, the table entitled ''South Dakota—Ozone'' is revised to read as follows:

**§ 81.342 South Dakota.**

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SOUTH DAKOTA—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Statewide | ..... | 1 hr. std. N.A.[2] | | |
| Aurora County | | | | |
| Beadle County | | | | |
| Bennett County | | | | |
| Bon Homme County | | | | |
| Brookings County | | | | |
| Brown County | | | | |
| Brule County | | | | |
| Buffalo County | | | | |
| Butte County | | | | |
| Campbell County | | | | |
| Charles Mix County | | | | |
| Clark County | | | | |

SOUTH DAKOTA—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Clay County | | | | |
| Codington County | | | | |
| Corson County | | | | |
| Custer County | | | | |
| Davison County | | | | |
| Day County | | | | |
| Deuel County | | | | |
| Dewey County | | | | |
| Douglas County | | | | |
| Edmunds County | | | | |
| Fall River County | | | | |
| Faulk County | | | | |
| Grant County | | | | |
| Gregory County | | | | |
| Haakon County | | | | |
| Hamlin County | | | | |
| Hand County | | | | |
| Hanson County | | | | |
| Harding County | | | | |
| Hughes County | | | | |
| Hutchinson County | | | | |
| Hyde County | | | | |
| Jackson County | | | | |
| Jerauld County | | | | |
| Jones County | | | | |
| Kingsbury County | | | | |
| Lake County | | | | |
| Lawrence County | | | | |
| Lincoln County | | | | |
| Lyman County | | | | |
| Marshall County | | | | |
| McCook County | | | | |
| McPherson County | | | | |
| Meade County | | | | |
| Mellette County | | | | |
| Miner County | | | | |
| Minnehaha County | | | | |
| Moody County | | | | |
| Pennington County | | | | |
| Perkins County | | | | |
| Potter County | | | | |
| Roberts County | | | | |
| Sanborn County | | | | |
| Shannon County | | | | |
| Spink County | | | | |
| Stanley County | | | | |
| Sully County | | | | |
| Todd County | | | | |
| Tripp County | | | | |
| Turner County | | | | |
| Union County | | | | |
| Walworth County | | | | |
| Yankton County | | | | |
| Ziebach County | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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44. In § 81.343, the table entitled ''Tennessee—Ozone'' is revised to read as follows:

**§ 81.343 Tennessee.**

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TENNESSEE—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Jefferson County Area: | | | | |

TENNESSEE—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Jefferson County | 11/15/90 | Unclassifiable/Attainment | 11/15/90 | |
| Memphis Area: | | | | |
| Shelby County | 2/16/95 | Attainment. | | |
| Rest of State | ..... | 1 hr.std.N.A. [2] | | |
| Anderson County | | | | |
| Bedford County | | | | |
| Benton County | | | | |
| Bledsoe County | | | | |
| Blount County | | | | |
| Bradley County | | | | |
| Campbell County | | | | |
| Cannon County | | | | |
| Carroll County | | | | |
| Carter County | | | | |
| Cheatham County | | | | |
| Chester County | | | | |
| Claiborne County | | | | |
| Clay County | | | | |
| Cocke County | | | | |
| Coffee County | | | | |
| Crockett County | | | | |
| Cumberland County | | | | |
| DeKalb County | | | | |
| Decatur County | | | | |
| Dickson County | | | | |
| Davidson County | | | | |
| Dyer County | | | | |
| Fayette County | | | | |
| Fentress County | | | | |
| Franklin County | | | | |
| Gibson County | | | | |
| Giles County | | | | |
| Grainger County | | | | |
| Greene County | | | | |
| Grundy County | | | | |
| Hamblen County | | | | |
| Hamilton County | | | | |
| Hancock County | | | | |
| Hardeman County | | | | |
| Hardin County | | | | |
| Hawkins County | | | | |
| Haywood County | | | | |
| Henderson County | | | | |
| Henry County | | | | |
| Hickman County | | | | |
| Houston County | | | | |
| Humphreys County | | | | |
| Jackson County | | | | |
| Johnson County | | | | |
| Knox County | | | | |
| Lake County | | | | |
| Lauderdale County | | | | |
| Lawrence County | | | | |
| Lewis County | | | | |
| Lincoln County | | | | |
| Loudon County | | | | |
| Macon County | | | | |
| Madison County | | | | |
| Marion County | | | | |
| Marshall County | | | | |
| Maury County | | | | |
| McMinn County | | | | |
| McNairy County | | | | |
| Meigs County | | | | |
| Monroe County | | | | |
| Montgomery County | | | | |
| Moore County | | | | |
| Morgan County | | | | |
| Obion County | | | | |
| Overton County | | | | |

TENNESSEE—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Perry County | | | | |
| Pickett County | | | | |
| Polk County | | | | |
| Putnam County | | | | |
| Rhea County | | | | |
| Roane County | | | | |
| Robertson County | | | | |
| Rutherford County | | | | |
| Scott County | | | | |
| Sequatchie County | | | | |
| Sevier County | | | | |
| Smith County | | | | |
| Stewart County | | | | |
| Sullivan County | | | | |
| Sumner County | | | | |
| Tipton County | | | | |
| Trousdale County | | | | |
| Unicoi County | | | | |
| Union County | | | | |
| Van Buren County | | | | |
| Warren County | | | | |
| Washington County | | | | |
| Wayne County | | | | |
| Weakley County | | | | |
| White County | | | | |
| Williamson County | | | | |
| Wilson County | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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45. In § 81.344, the table entitled ''Texas—Ozone'' is revised to read as follows:

**§ 81.344 Texas.**

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TEXAS—OZONE (1-HOUR STANDARD)

| Designated Area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Beaumont/Port Arthur Area: | | | | |
| Hardin County | 11/15/90 | Nonattainment | 6/3/96 | Moderate |
| Jefferson County | 11/15/90 | Nonattainment | 6/3/96 | Moderate |
| Orange County | 11/15/90 | Nonattainment | 6/3/96 | Moderate |
| Dallas-Fort Worth Area: | | | | |
| Collin County | 11/15/90 | Nonattainment | 11/15/90 | Moderate |
| Dallas County | 11/15/90 | Nonattainment | 11/15/90 | Moderate |
| Denton County | 11/15/90 | Nonattainment | 11/15/90 | Moderate |
| Tarrant County | 11/15/90 | Nonattainment | 11/15/90 | Moderate |
| El Paso Area: | | | | |
| El Paso County | 11/15/90 | Nonattainment | 11/15/90 | Serious |
| Houston-Galveston-Brazoria Area: | | | | |
| Brazoria County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17 |
| Chambers County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17 |
| Fort Bend County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17 |
| Galveston County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17 |
| Harris County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17 |
| Liberty County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17 |
| Montgomery County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17 |
| Waller County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17 |
| Longview Area: | | | | |
| Gregg County | 11/15/90 | Unclassifiable /Attainment. | 11/15/90 | |
| Victoria Area: | | | | |
| Victoria County | ..... | 1 hr. std. N.A.[2] | | |
| AQCR 022 Shreveport-Texarkana-Tyler | ..... | 1 hr. std. N.A.[2] | | |
| Anderson County | | | | |
| Bowie County | | | | |

TEXAS—OZONE (1-HOUR STANDARD)—Continued

| Designated Area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Camp County | | | | |
| Cass County | | | | |
| Cherokee County | | | | |
| Delta County | | | | |
| Franklin County | | | | |
| Harrison County | | | | |
| Henderson County | | | | |
| Hopkins County | | | | |
| Lamar County | | | | |
| Marion County | | | | |
| Morris County | | | | |
| Panola County | | | | |
| Rains County | | | | |
| Red River County | | | | |
| Rusk County | | | | |
| Smith County | | | | |
| Titus County | | | | |
| Upshur County | | | | |
| Van Zandt County | | | | |
| Wood County | | | | |
| AQCR 106 S Louisiana-SE Texas Interstate (Remainder of) | ..... | 1 hr. std. N.A.[2] | | |
| Angelina County | | | | |
| Houston County | | | | |
| Jasper County | | | | |
| Nacogdoches County | | | | |
| Newton County | | | | |
| Polk County | | | | |
| Sabine County | | | | |
| San Augustine County | | | | |
| San Jacinto County | | | | |
| Shelby County | | | | |
| Trinity County | | | | |
| Tyler County | | | | |
| Walker County | | | | |
| AQCR 153 El Paso-Las Cruces-Alamogordo ..... | ..... | 1 hr. std. N.A.[2] | | |
| Brewster County | | | | |
| Culberson County | | | | |
| Hudspeth County | | | | |
| Jeff Davis County | | | | |
| Presidio County | | | | |
| AQCR 210 Abilene-Wichita Falls Intrastate ..... | ..... | 1 hr. std. N.A.[2] | | |
| Archer County | | | | |
| Baylor County | | | | |
| Brown County | | | | |
| Callahan County | | | | |
| Childress County | | | | |
| Clay County | | | | |
| Coke County | | | | |
| Coleman County | | | | |
| Comanche County | | | | |
| Concho County | | | | |
| Cottle County | | | | |
| Eastland County | | | | |
| Fisher County | | | | |
| Foard County | | | | |
| Hardeman County | | | | |
| Haskell County | | | | |
| Jack County | | | | |
| Jones County | | | | |
| Kent County | | | | |
| Knox County | | | | |
| McCulloch County | | | | |
| Menard County | | | | |
| Mitchell County | | | | |
| Montague County | | | | |
| Nolan County | | | | |
| Runnels County | | | | |
| Scurry County | | | | |
| Shackelford County | | | | |
| Stephens County | | | | |

TEXAS—OZONE (1-HOUR STANDARD)—Continued

| Designated Area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Stonewall County | | | | |
| Taylor County | | | | |
| Throckmorton County | | | | |
| Wichita County | | | | |
| Wilbarger County | | | | |
| Young County | | | | |
| AQCR 211 Amarillo-Lubbock Intrastate | | 1 hr. std. N.A.[2] | | |
| Armstrong County | | | | |
| Bailey County | | | | |
| Briscoe County | | | | |
| Carson County | | | | |
| Castro County | | | | |
| Cochran County | | | | |
| Collingsworth County | | | | |
| Crosby County | | | | |
| Dallam County | | | | |
| Deaf Smith County | | | | |
| Dickens County | | | | |
| Donley County | | | | |
| Floyd County | | | | |
| Garza County | | | | |
| Gray County | | | | |
| Hale County | | | | |
| Hall County | | | | |
| Hansford County | | | | |
| Hartley County | | | | |
| Hemphill County | | | | |
| Hockley County | | | | |
| Hutchinson County | | | | |
| King County | | | | |
| Lamb County | | | | |
| Lipscomb County | | | | |
| Lubbock County | | | | |
| Lynn County | | | | |
| Moore County | | | | |
| Motley County | | | | |
| Ochiltree County | | | | |
| Oldham County | | | | |
| Parmer County | | | | |
| Potter County | | | | |
| Randall County | | | | |
| Roberts County | | | | |
| Sherman County | | | | |
| Swisher County | | | | |
| Terry County | | | | |
| Wheeler County | | | | |
| Yoakum County | | | | |
| AQCR 212 Austin-Waco Intrastate | | 1 hr. std. N.A.[2] | | |
| Bastrop County | | | | |
| Bell County | | | | |
| Blanco County | | | | |
| Bosque County | | | | |
| Brazos County | | | | |
| Burleson County | | | | |
| Burnet County | | | | |
| Caldwell County | | | | |
| Coryell County | | | | |
| Falls County | | | | |
| Fayette County | | | | |
| Freestone County | | | | |
| Grimes County | | | | |
| Hamilton County | | | | |
| Hays County | | | | |
| Hill County | | | | |
| Lampasas County | | | | |
| Lee County | | | | |
| Leon County | | | | |
| Limestone County | | | | |
| Llano County | | | | |
| Madison County | | | | |

TEXAS—OZONE (1-HOUR STANDARD)—Continued

| Designated Area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| McLennan County | | | | |
| Milam County | | | | |
| Mills County | | | | |
| Robertson County | | | | |
| San Saba County | | | | |
| Travis County | | | | |
| Washington County | | | | |
| Williamson County | | | | |
| AQCR 213 Brownsville-Laredo Intrastate | | 1 hr. std. N.A.[2] | | |
| Cameron County | | | | |
| Hidalgo County | | | | |
| Jim Hogg County | | | | |
| Starr County | | | | |
| Webb County | | | | |
| Willacy County | | | | |
| Zapata County | | | | |
| AQCR 214 Corpus Christi-Victoria Intrastate (Remainder of) | | 1 hr.std.N.A.[2] | | |
| Aransas County | | | | |
| Bee County | | | | |
| Brooks County | | | | |
| Calhoun County | | | | |
| De Witt County | | | | |
| Duval County | | | | |
| Goliad County | | | | |
| Jackson County | | | | |
| Jim Wells County | | | | |
| Kenedy County | | | | |
| Kleberg County | | | | |
| Lavaca County | | | | |
| Live Oak County | | | | |
| McMullen County | | | | |
| Refugio County | | | | |
| San Patricio County | | | | |
| AQCR 214 Corpus Christi-Victoria Intrastate (part) | | 1 hr. std. N.A.[2] | | |
| Nueces County | | | | |
| AQCR 215 Metro Dallas-Fort Worth Intrastate (Remainder of). | | 1 hr.std.N.A.[2]. | | |
| Cooke County | | | | |
| Ellis County | | | | |
| Erath County | | | | |
| Fannin County | | | | |
| Grayson County | | | | |
| Hood County | | | | |
| Hunt County | | | | |
| Johnson County | | | | |
| Kaufman County | | | | |
| Navarro County | | | | |
| Palo Pinto County | | | | |
| Parker County | | | | |
| Rockwall County | | | | |
| Somervell County | | | | |
| Wise County | | | | |
| AQCR 216 Metro Houston-Galveston Intrastate (Remainder of). | | 1 hr.std.N.A.[2] | | |
| Austin County | | | | |
| Colorado County | | | | |
| Matagorda County | | | | |
| Wharton County | | | | |
| AQCR 217 Metro San Antonio Intrastate (part) | | 1 hr. std. N.A.[2] | | |
| Bexar County | | | | |
| AQCR 217 Metro San Antonio Intrastate (Remainder of) | | 1 hr.std.N.A.[2] | | |
| Atascosa County | | | | |
| Bandera County | | | | |
| Comal County | | | | |
| Dimmit County | | | | |
| Edwards County | | | | |
| Frio County | | | | |
| Gillespie County | | | | |
| Gonzales County | | | | |
| Guadalupe County | | | | |

TEXAS—OZONE (1-HOUR STANDARD)—Continued

| Designated Area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Karnes County | | | | |
| Kendall County | | | | |
| Kerr County | | | | |
| Kimble County | | | | |
| Kinney County | | | | |
| La Salle County | | | | |
| Mason County | | | | |
| Maverick County | | | | |
| Medina County | | | | |
| Real County | | | | |
| Uvalde County | | | | |
| Val Verde County | | | | |
| Wilson County | | | | |
| Zavala County | | | | |
| AQCR 218 Midland-Odessa-San Angelo Intrastate (part). | ..... | 1 hr.std.N.A.[2] | | |
| Ector County | | | | |
| AQCR 218 Midland-Odessa-San Angelo Intrastate (Remainder of). | ..... | 1 hr.std.N.A.[2] | | |
| Andrews County | | | | |
| Borden County | | | | |
| Crane County | | | | |
| Crockett County | | | | |
| Dawson County | | | | |
| Gaines County | | | | |
| Glasscock County | | | | |
| Howard County | | | | |
| Irion County | | | | |
| Loving County | | | | |
| Martin County | | | | |
| Midland County | | | | |
| Pecos County | | | | |
| Reagan County | | | | |
| Reeves County | | | | |
| Schleicher County | | | | |
| Sterling County | | | | |
| Sutton County | | | | |
| Terrell County | | | | |
| Tom Green County | | | | |
| Upton County | | | | |
| Ward County | | | | |
| Winkler County | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * * * *

46. In § 81.345, the table entitled ''Utah—Ozone'' is revised to read as follows:

**§ 81.345 Utah.**

* * * * * * *

UTAH—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Salt Lake City Area: | | | | |
| Davis County | ..... | 1 hr. std. N.A.[2] | | |
| Salt Lake County | ..... | 1 hr. std. N.A.[2] | | |
| Rest of State | ..... | 1 hr. std. N.A.[2] | | |
| Beaver County | | | | |
| Box Elder County | | | | |
| Cache County | | | | |
| Carbon County | | | | |
| Daggett County | | | | |
| Duchesne County | | | | |
| Emery County | | | | |
| Garfield County | | | | |
| Grand County | | | | |
| Iron County | | | | |

UTAH—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Juab County | | | | |
| Kane County | | | | |
| Millard County | | | | |
| Morgan County | | | | |
| Piute County | | | | |
| Rich County | | | | |
| San Juan County | | | | |
| Sanpete County | | | | |
| Sevier County | | | | |
| Summit County | | | | |
| Tooele County | | | | |
| Uintah County | | | | |
| Utah County | | | | |
| Wasatch County | | | | |
| Washington County | | | | |
| Wayne County | | | | |
| Weber County | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * * * *

47. In § 81.346, the table entitled ''Vermont—Ozone'' is revised to read as follows:

**§ 81.346 Vermont.**

* * * * * * *

VERMONT—OZONE (1-HHOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| AQCR 159 Champlain Calley Interstate (part) | | 1 hr. std. N.A.[2] | | |
| Addison County | | | | |
| Chittenden County | | | | |
| AQCR 159 Champlain Calley Interstate (Remainder of) | | 1 hr. std. N.A.[2] | | |
| Franklin County | | | | |
| Grand Isle County | | | | |
| Rutland County | | | | |
| AQCR 221 Vermont Intrastate (part). | | 1 hr. std. N.A.[2] | | |
| Windsor County | | | | |
| AQCR 221 Vermont Intrastate (Remainder of) | | 1 hr. std. N.A.[2] | | |
| Bennington County | | | | |
| Caledonia County | | | | |
| Essex County | | | | |
| Lamoille County | | | | |
| Orange County | | | | |
| Orleans County | | | | |
| Washington County | | | | |
| Windham County | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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48. In Section 81.347, the table entitled ''Virginia—Ozone'' is revised to read as follows:

**§ 81.347 Virginia.**

* * * * * * *

VIRGINIA—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Norfolk-Virginia Beach-Newport News (Hampton Roads) Area: | | | | |
| Chesapeake | | 1 hr. std. N.A.[2] | | |
| Hampton | | 1 hr. std. N.A.[2] | | |

VIRGINIA—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| James City County | | 1 hr. std. N.A.[2] | | |
| Newport News | | 1 hr. std. N.A.[2] | | |
| Norfolk | | 1 hr. std. N.A.[2] | | |
| Poquoson | | 1 hr. std. N.A.[2] | | |
| Portsmouth | | 1 hr. std. N.A.[2] | | |
| Suffolk | | 1 hr. std. N.A.[2] | | |
| Virginia Beach | | 1 hr. std. N.A.[2] | | |
| Williamsburg | | 1 hr. std. N.A.[2] | | |
| York County | | 1 hr. std. N.A.[2] | | |
| Richmond Area: | | | | |
| Charles City County (part) | | 1 hr. std. N.A.[2] | | |
| Beginning at the intersection of State Route 156 and the Henrico Charles City County Line, proceeding south along State Route 5/156 to the intersection with State Route 106/156, proceeding south along Route 106/156 to the intersection with the Prince George/Charles City County line, proceeding west along the Prince George/Charles City County line to the intersection with the Chesterfield/Charles City County line, proceeding north along the Chesterfield/Charles City County line to the intersection with the Henrico/Charles City County line, proceeding north along the Henrico/Charles City County line to State Route 156. | | | | |
| Chesterfield County | | 1 hr. std. N.A.[2] | | |
| Colonial Heights | | 1 hr. std. N.A.[2] | | |
| Hanover County | | 1 hr. std. N.A.[2] | | |
| Henrico County | | 1 hr. std. N.A.[2] | | |
| Hopewell | | 1 hr. std. N.A.[2] | | |
| Richmond | | 1 hr. std. N.A.[2] | | |
| Smyth County Area: | | | | |
| Smyth County (part) | | 1 hr. std. N.A.[2] | | |
| The portion of White Top Mountain above the 4,500 foot elevation in Smyth County. | | | | |
| Washington Area: | | | | |
| Alexandria | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Arlington County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Fairfax | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Fairfax County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Falls Church | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Loudoun County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Manassas | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Manassas Park | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Prince William County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| Stafford County | 11/15/90 | Nonattainment | 11/15/90 | Serious. |
| AQCR 207 Eastern Tennessee—SW Virginia Interstate (Remainder of). | | 1 hr. std. N.A.[2] | | |
| Bland County | | | | |
| Bristol | | | | |
| Buchanan County | | | | |
| Carroll County | | | | |
| Dickenson County | | | | |
| Galax | | | | |
| Grayson County | | | | |
| Lee County | | | | |
| Norton | | | | |
| Russell County | | | | |
| Scott County | | | | |
| Smyth County (part) | | | | |
| Remainder of county | | | | |
| Tazewell County | | | | |
| Washington County | | | | |
| Wise County | | | | |
| Wythe County | | | | |
| AQCR 222 Central Virginia Intrastate | | 1 hr. std. N.A.[2] | | |
| Amelia County | | | | |
| Amherst County | | | | |
| Appomattox County | | | | |
| Bedford | | | | |
| Bedford County | | | | |

VIRGINIA—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Brunswick County | | | | |
| Buckingham County | | | | |
| Campbell County | | | | |
| Charlotte County | | | | |
| Cumberland County | | | | |
| Danville | | | | |
| Franklin County | | | | |
| Halifax County | | | | |
| Henry County | | | | |
| Lunenburg County | | | | |
| Lynchburg | | | | |
| Martinsville | | | | |
| Mecklenburg County | | | | |
| Nottoway County | | | | |
| Patrick County | | | | |
| Pittsylvania County | | | | |
| Prince Edward County | | | | |
| South Boston | | | | |
| AQCR 223 Hampton Roads Intrastate (Remainder of) | ..... | 1 hr. std. N.A.[2] | | |
| Franklin | | | | |
| Isle Of Wight County | | | | |
| Southampton County | | | | |
| AQCR 224 NE Virginia Intrastate (Remainder of) | ..... | 1 hr. std. N.A.[2] | | |
| Accomack County | | | | |
| Albemarle County | | | | |
| Caroline County | | | | |
| Charlottesville | | | | |
| Culpeper County | | | | |
| Essex County | | | | |
| Fauquier County | | | | |
| Fluvanna County | | | | |
| Fredericksburg | | | | |
| Gloucester County | | | | |
| Greene County | | | | |
| King And Queen County | | | | |
| King George County | | | | |
| King William County | | | | |
| Lancaster County | | | | |
| Louisa County | | | | |
| Madison County | | | | |
| Mathews County | | | | |
| Middlesex County | | | | |
| Nelson County | | | | |
| Northampton County | | | | |
| Northumberland County | | | | |
| Orange County | | | | |
| Rappahannock County | | | | |
| Richmond County | | | | |
| Spotsylvania County | | | | |
| Westmoreland County | | | | |
| AQCR 225 State Capital Intrastate (Remainder of) | ..... | 1 hr. std. N.A.[2] | | |
| Charles City County (part) | | | | |
| Remainder of county | | | | |
| Dinwiddie County | | | | |
| Emporia | | | | |
| Goochland County | | | | |
| Greensville County | | | | |
| New Kent County | | | | |
| Petersburg | | | | |
| Powhatan County | | | | |
| Prince George County | | | | |
| Surry County | | | | |
| Sussex County | | | | |
| AQCR 226 Valley of Virginia Intrastate | ..... | 1 hr. std. N.A.[2] | | |
| Alleghany County | | | | |
| Augusta County | | | | |
| Bath County | | | | |
| Botetourt County | | | | |
| Buena Vista | | | | |
| Clarke County | | | | |

VIRGINIA—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Clifton Forge | | | | |
| Covington | | | | |
| Craig County | | | | |
| Floyd County | | | | |
| Frederick County | | | | |
| Giles County | | | | |
| Harrisonburg | | | | |
| Highland County | | | | |
| Lexington | | | | |
| Montgomery County | | | | |
| Page County | | | | |
| Pulaski County | | | | |
| Radford | | | | |
| Roanoke | | | | |
| Roanoke County | | | | |
| Rockbridge County | | | | |
| Rockingham County | | | | |
| Salem | | | | |
| Shenandoah County | | | | |
| Staunton | | | | |
| Warren County | | | | |
| Waynesboro | | | | |
| Winchester | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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49. In § 81.348, the table entitled ''Washington—Ozone'' is revised to read as follows:

**§ 81.348 Washington.**

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WASHINGTON—OZONE (1-HOUR STANDARD)

| Designated Area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Portland—Vancouver AQMA Area: | | | | |
| Clark County (part) | | | | |
| Air Quality Maintenance Area ..... | ..... | 1 hr.std. N.A.[2] | | |
| Seattle-Tacoma Area: | | | | |

WASHINGTON—OZONE (1-HOUR STANDARD)—Continued

| Designated Area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| The following boundary includes all of Pierce County, and all of King County except a small portion on the north-east corner and the western portion of Snohomish County: Starting at the mouth of the Nisqually River extend northwesterly along the Pierce County line to the southernmost point of the west county line of King County; thence northerly along the county line to the southermost point of the west county line of Snohomish County; thence northerly along the county line to the intersection with SR 532; thence easterly along the north line of SR 532 to the intersection of I–5, continuing east along the same road now identified as Henning Rd., to the intersection with SR 9 at Bryant; thence continuing easterly on Bryant East Rd. and Rock Creek Rd., also identified as Grandview Rd., approximately 3 miles to the point at which it is crossed by the existing BPA electrical transmission line; thence southeasterly along the BPA transmission line approximately 8 miles to point of the crossing of the south fork of the Stillaguamish River; thence continuing in a southeasterly direction in a meander line following the bed of the River to Jordan Road; southerly along Jordan Road to the north city limits of Granite Falls; thence following the north and east city limits to 92nd St. N.E. and Menzel Lake Rd; thence south-southeasterly along the Menzel Lake Rd. and the Lake Roesiger Rd. a distance of approximately 6 miles to the northernmost point of Lake Roesiger; thence southerly along a meander line following the middle of the Lake and Roesiger Creek to Woods Creek; thence southerly along a meander line following the bed of the Creek approximately 6 miles to the point the Creek is crossed by the existing BPA electrical transmission line; thence easterly along the BPA transmission line approximately 0.2 miles; thence southerly along the BPA Chief Joseph-Covington electrical transmission line approximately 3 miles to the north line of SR 2; thence southeasterly along SR 2 to the intersection with the east county line of King County; thence south along the county line to the northernmost point of the east county line of Pierce County; thence along the county line to the point of beginning at the mouth of the Nisqually River. | ..... | 1 hr. std. N.A.[2] | | |
| AQCR 062 E Washington-N Idaho Interstate (part) ..... | ..... | 1 hr. std. N.A.[2] | | |
| Spokane County | | | | |
| AQCR 062 E Washington-N Idaho Interstate (Remainder of) | ..... | 1 hr. std. N.A.[2] | | |
| Adams County | | | | |
| Asotin County | | | | |
| Columbia County | | | | |
| Garfield County | | | | |
| Grant County | | | | |
| Lincoln County | | | | |
| Whitman County | | | | |
| AQCR 193 Portland Interstate (Remainder of) ..... | ..... | 1 hr. std. N.A.[2] | | |
| Clark County (part) | | | | |
| Remainder of County | | | | |
| Cowlitz County | | | | |
| Lewis County | | | | |
| Skamania County | | | | |
| Wahkiakum County | | | | |
| AQCR 227 Northern Washington Intrastate ..... | ..... | 1 hr. std. N.A.[2] | | |
| Chelan County | | | | |
| Douglas County | | | | |
| Ferry County | | | | |
| Okanogan County | | | | |
| Pend Oreille County | | | | |
| Stevens County | | | | |
| AQCR 228 Olympic,-Northwest Washington Intrastate ..... | ..... | 1 hr. std. N.A.[2] | | |
| Clallam County | | | | |
| Grays Harbor County | | | | |
| Island County | | | | |
| Jefferson County | | | | |
| Mason County | | | | |

WASHINGTON—OZONE (1-HOUR STANDARD)—Continued

| Designated Area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Pacific County | | | | |
| San Juan County | | | | |
| Skagit County | | | | |
| Thurston County | | | | |
| Whatcom County | | | | |
| AQCR 229 Puget Sound Intrastate (Remainder of) | | 1 hr. std. N.A.[2] | | |
| King County (Part) | | | | |
| Remainder of County | | | | |
| Kitsap County | | | | |
| Snohomish County (Part) | | | | |
| Remainer of County | | | | |
| AQCR 230 South Central Washington Intrastate | | 1 hr. std. N.A.[2] | | |
| Benton County | | | | |
| Franklin County | | | | |
| Kittitas County | | | | |
| Klickitat County | | | | |
| Walla Walla County | | | | |
| Yakima County | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * * * *

50. In § 81.349, the table entitled ''West Virginia—Ozone'' is revised to read as follows:

**§ 81.349 West Virginia.**

* * * * * * *

WEST VIRGINIA—OZONE (1-HOUR STANDARD)

| Designated Area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Charleston area: | | | | |
| Kanawha County | | 1 hr. std. N.A.[2] | | |
| Putnam County | | 1 hr. std. N.A.[2] | | |
| Greenbrier Area: | | | | |
| Greenbrier County | | 1 hr. std. N.A.[2] | | |
| Huntington-Ashland Area: | | | | |
| Cabell County. | | 1 hr. std. N.A.[2] | | |
| Wayne County | | 1 hr. std. N.A.[2] | | |
| Parkersburg-Marietta Area: | | | | |
| Wood County | | 1 hr. std. N.A.[2] | | |
| Rest of State | | 1 hr. std. N.A.[2] | | |
| Barbour County | | | | |
| Berkeley County | | | | |
| Boone County | | | | |
| Braxton County | | | | |
| Brooke County | | | | |
| Calhoun County | | | | |
| Clay County | | | | |
| Doddridge County | | | | |
| Fayette County | | | | |
| Gilmer County | | | | |
| Grant County | | | | |
| Hampshire County | | | | |
| Hancock County | | | | |
| Hardy County | | | | |
| Harrison County | | | | |
| Jackson County | | | | |
| Jefferson County | | | | |
| Lewis County | | | | |
| Lincoln County | | | | |
| Logan County | | | | |
| Marion County | | | | |
| Marshall County | | | | |
| Mason County | | | | |
| McDowell County | | | | |
| Mercer County | | | | |
| Mineral County | | | | |

WEST VIRGINIA—OZONE (1-HOUR STANDARD)—Continued

| Designated Area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Mingo County | | | | |
| Monongalia County | | | | |
| Monroe County | | | | |
| Morgan County | | | | |
| Nicholas County | | | | |
| Ohio County | | | | |
| Pendleton County | | | | |
| Pleasants County | | | | |
| Pocahontas County | | | | |
| Preston County | | | | |
| Raleigh County | | | | |
| Randolph County | | | | |
| Ritchie County | | | | |
| Roane County | | | | |
| Summers County | | | | |
| Taylor County | | | | |
| Tucker County | | | | |
| Tyler County | | | | |
| Upshur County | | | | |
| Webster County | | | | |
| Wetzel County | | | | |
| Wirt County | | | | |
| Wyoming County | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * * * *

51. In § 81.350, the table entitled ''Wisconsin—Ozone'' is revised to read as follows:

**§ 81.350 Wisconsin.**

* * * * * * *

WISCONSIN—OZONE (1-HOUR STANDARD)

| Designation area | Designated | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Door County Area: | | | | |
| Door County | 1/6/92 | Nonattainment | 1/6/92 | Rural Transport (Marginal). |
| Kewaunee County Area: | | | | |
| Kewaunee County | | 1 hr. std. N.A.[2] | | |
| Manitowoc County Area: | | | | |
| Manitowoc County | 1/6/92 | Nonattainment | 1/6/92 | Moderate. |
| Milwaukee-Racine Area: | | | | |
| Kenosha County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Milwaukee County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Ozaukee County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Racine County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Washington County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Waukesha County | 11/15/90 | Nonattainment | 11/15/90 | Severe-17. |
| Sheboygan County Area: | | | | |
| Sheboygan County | | 1 hr. std. N.A.[2] | | |
| Walworth County Area: | | | | |
| Walworth County | | 1 hr. std. N.A.[2] | | |
| Adams County | | 1 hr. std. N.A.[2] | | |
| Ashland County | | 1 hr. std. N.A.[2] | | |
| Barron County | | 1 hr. std. N.A.[2] | | |
| Bayfield County | | 1 hr. std. N.A.[2] | | |
| Brown County | | 1 hr. std. N.A.[2] | | |
| Buffalo County | | 1 hr. std. N.A.[2] | | |
| Burnett County | | 1 hr. std. N.A.[2] | | |
| Calumet County | | 1 hr. std. N.A.[2] | | |
| Chippewa County | | 1 hr. std. N.A.[2] | | |
| Clark County | | 1 hr. std. N.A.[2] | | |
| Columbia County | | 1 hr. std. N.A.[2] | | |
| Crawford County | | 1 hr. std. N.A.[2] | | |
| Dane County | | 1 hr. std. N.A.[2] | | |
| Dodge County | | 1 hr. std. N.A.[2] | | |

WISCONSIN—OZONE (1-HOUR STANDARD)—Continued

| Designation area | Designated | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Douglas County | | 1 hr. std. N.A.[2] | | |
| Dunn County | | 1 hr. std. N.A.[2] | | |
| Eau Claire County | | 1 hr. std. N.A.[2] | | |
| Florence County | | 1 hr. std. N.A.[2] | | |
| Fond du Lac County | | 1 hr. std. N.A.[2] | | |
| Forest County | | 1 hr. std. N.A.[2] | | |
| Grant County | | 1 hr. std. N.A.[2] | | |
| Green County | | 1 hr. std. N.A.[2] | | |
| Green Lake County | | 1 hr. std. N.A.[2] | | |
| Iowa County | | 1 hr. std. N.A.[2] | | |
| Iron County | | 1 hr. std. N.A.[2] | | |
| Jackson County | | 1 hr. std. N.A.[2] | | |
| Jefferson County | | 1 hr. std. N.A.[2] | | |
| Juneau County | | 1 hr. std. N.A.[2] | | |
| La Crosse County | | 1 hr. std. N.A.[2] | | |
| Lafayette County | | 1 hr. std. N.A.[2] | | |
| Langlade County | | 1 hr. std. N.A.[2] | | |
| Lincoln County | | 1 hr. std. N.A.[2] | | |
| Marathon County | | 1 hr. std. N.A.[2] | | |
| Marinette County | | 1 hr. std. N.A.[2] | | |
| Marquette County | | 1 hr. std. N.A.[2] | | |
| Menominee County | | 1 hr. std. N.A.[2] | | |
| Monroe County | | 1 hr. std. N.A.[2] | | |
| Oconto County | | 1 hr. std. N.A.[2] | | |
| Oneida County | | 1 hr. std. N.A.[2] | | |
| Outagamie County | | 1 hr. std. N.A.[2] | | |
| Pepin County | | 1 hr. std. N.A.[2] | | |
| Pierce County | | 1 hr. std. N.A.[2] | | |
| Polk County | | 1 hr. std. N.A.[2] | | |
| Portage County | | 1 hr. std. N.A.[2] | | |
| Price County | | 1 hr. std. N.A.[2] | | |
| Richland County | | 1 hr. std. N.A.[2] | | |
| Rock County | | 1 hr. std. N.A.[2] | | |
| Rusk County | | 1 hr. std. N.A.[2] | | |
| St. Croix County | | 1 hr. std. N.A.[2] | | |
| Sauk County | | 1 hr. std. N.A.[2] | | |
| Sawyer County | | 1 hr. std. N.A.[2] | | |
| Shawano County | | 1 hr. std. N.A.[2] | | |
| Taylor County | | 1 hr. std. N.A.[2] | | |
| Trempealeau County | | 1 hr. std. N.A.[2] | | |
| Vernon County | | 1 hr. std. N.A.[2] | | |
| Vilas County | | 1 hr. std. N.A.[2] | | |
| Washburn County | | 1 hr. std. N.A.[2] | | |
| Waupaca County | | 1 hr. std. N.A.[2] | | |
| Waushara County | | 1 hr. std. N.A.[2] | | |
| Winnebago County | | 1 hr. std. N.A.[2] | | |
| Wood County | | 1 hr. std. N.A.[2] | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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52. In § 81.351, the table entitled ''Wyoming—Ozone'' is revised to read as follows:

**§ 81.351 Wyoming.**

* * * * * * *

WYOMING—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Statewide | | 1 hr. std. N.A.[2] | | |
| Albany County | | | | |
| Big Horn County | | | | |
| Campbell County | | | | |
| Carbon County | | | | |
| Converse County | | | | |
| Crook County | | | | |
| Fremont County | | | | |

WYOMING—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Goshen County | | | | |
| Hot Springs County | | | | |
| Johnson County | | | | |
| Laramie County | | | | |
| Lincoln County | | | | |
| Natrona County | | | | |
| Niobrara County | | | | |
| Park County | | | | |
| Platte County | | | | |
| Sheridan County | | | | |
| Sublette County | | | | |
| Sweetwater County | | | | |
| Teton County | | | | |
| Uinta County | | | | |
| Washakie County | | | | |
| Weston County | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * * * *

53. In § 81.352, the table entitled ''American Samoa—Ozone'' is revised to read as follows:

**§ 81.352 American Samoa.**

* * * * * * *

AMERICAN SAMOA—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Statewide | ..... | 1 hr. std. N.A.[2] | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * * * *

54. In § 81.353, the table entitled ''Guam—Ozone'' is revised to read as follows:

**§ 81.353 Guam.**

* * * * * * *

GUAM—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Statewide | ..... | 1 hr. std. N.A.[2] | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * * * *

55. In Section 81.354, the table entitled ''Northern Mariana Islands—Ozone'' is revised to read as follows:

**§ 81.354 Northern Mariana Islands.**

* * * * * * *

NORTHERN MARIANA ISLANDS—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Whole State | ..... | 1 hr. std. N.A.[2] | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * * * *

56. In § 81.355, the table entitled ''Puerto Rico—Ozone'' is revised to read as follows:

**§ 81.355 Puerto Rico.**

* * * * * * *

PUERTO RICO—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Statewide | | 1 hr. std. N.A.[2] | | |
| Adjuntas Municipio | | | | |
| Aguada Municipio | | | | |
| Aguadilla Municipio | | | | |
| Aguas Buenas Municipio | | | | |
| Aibonito Municipio | | | | |
| Anasco Municipio | | | | |
| Arecibo Municipio | | | | |
| Arroyo Municipio | | | | |
| Barceloneta Municipio | | | | |
| Barranquitas Munic. | | | | |
| Bayamon County | | | | |
| Caba Rojo Municipio | | | | |
| Caguas Municipio | | | | |
| Camuy Municipio | | | | |
| Canovanas Municipio | | | | |
| Carolina Municipio | | | | |
| Catano County | | | | |
| Cayey Municipio | | | | |
| Ceiba Municipio | | | | |
| Ciales Municipio | | | | |
| Cidra Municipio | | | | |
| Coama Municipio | | | | |
| Comeria Municipio | | | | |
| Corozal Municipio | | | | |
| Culebra Municipio | | | | |
| Dorado Municipio | | | | |
| Fajardo Municipio | | | | |
| Florida Municipio | | | | |
| Guanica Municipio | | | | |
| Guayama Municipio | | | | |
| Guayanilla Municipio | | | | |
| Guaynabo County | | | | |
| Gurabo Municipio | | | | |
| Hatillo Municipio | | | | |
| Hormigueros Municipio | | | | |
| Humacao Municipio | | | | |
| Isabela Municipio | | | | |
| Jayuya Municipio | | | | |
| Juana Diaz Municipio | | | | |
| Juncos Municipio | | | | |
| Lajas Municipio | | | | |
| Lares Municipio | | | | |
| Las Marias Municipio | | | | |
| Las Piedras Municipio | | | | |
| Loiza Municipio | | | | |
| Luquillo Municipio | | | | |
| Manati Municipio | | | | |
| Maricao Municipio | | | | |
| Maunabo Municipio | | | | |
| Mayaguez Municipio | | | | |
| Moca Municipio | | | | |
| Morovis Municipio | | | | |
| Naguabo Municipio | | | | |
| Naranjito Municipio | | | | |
| Orocovis Municipio | | | | |
| Patillas Municipio | | | | |
| Penuelas Municipio | | | | |
| Ponce Municipio | | | | |
| Quebradillas Municipio | | | | |
| Rincon Municipio | | | | |
| Rio Grande Municipio | | | | |
| Sabana Grande Municipio | | | | |
| Salinas Municipio | | | | |
| San German Municipio | | | | |
| San Juan Municipio | | | | |
| San Lorenzo Municipio | | | | |

PUERTO RICO—OZONE (1-HOUR STANDARD)—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| San Sebastian Municipio | | | | |
| Santa Isabel Municipio | | | | |
| Toa Alta Municipio | | | | |
| Toa Baja County | | | | |
| Trujilla Alto Municipio | | | | |
| Utuado Municipio | | | | |
| Vega Alta Municipio | | | | |
| Vega Baja Municipio | | | | |
| Vieques Municipio | | | | |
| Villalba Municipio | | | | |
| Yabucoa Municipio | | | | |
| Yauco Municipio | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

* * * * * * *

57. In § 81.356, the table entitled ''Virgin Islands—Ozone'' is revised to read as follows:

**§ 81.356 Virgin Islands.**

* * * * * * *

VIRGIN ISLANDS—OZONE (1-HOUR STANDARD)

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| Statewide ..... | ..... | 1 hr. std. N.A.[2] | | |
| St. Croix | | | | |
| St. John | | | | |
| St. Thomas | | | | |

[1] This date is March 17, 1998, unless otherwise noted.
[2] 1 hour standard Not Applicable.

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[FR Doc. 98–935 Filed 1–15–98; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 81**

**[FRL–5945–6]**

## Identification of Ozone Areas Attaining the 1-Hour Standard and to Which the 1-Hour Standard is No Longer Applicable

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to approve the identification of ozone areas attaining the 1-hour standard and to which the 1-hour standard is no longer applicable. In the final rules section of this **Federal Register**, the EPA is approving the amendment to 40 CFR part 81 to reflect ozone areas where the 1-hour standard will cease to apply because they have not measured a current violation of the 1-hour standard. For all other areas, the 1-hour standard will continue to apply; such ozone areas will also be shown in 40 CFR part 81. Because the Agency views such action as a noncontroversial amendment and anticipates no adverse comments, the EPA is approving the amendment to 40 part 81 as a direct final rule without prior proposal. Today's regulation is being promulgated in direct response to the President's memorandum of July 16, 1997 which directed the EPA to publish within 90 days this action. A detailed rationale for this action is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document.

**DATES:** To be considered, comments must be received on or before February 17, 1998.

**ADDRESSES:** Written comments should be addressed to: Annie Nikbakht (policy) or Barry Gilbert (air quality data), Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Ozone Policy and Strategies Group, MD–15, Research Triangle Park, NC 27711. Electronic comments can be sent directly to EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–97–42. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: December 29, 1997.

**Carol M. Browner,**

*Administrator.*

[FR Doc. 98–934 Filed 1–15–98; 8:45 am]

BILLING CODE 6560–50–P

federal register

Friday
January 16, 1998

## Part III

# Federal Reserve System

**12 CFR Parts 207, 220, 221, 224, and 265**

**Securities Credit Transactions; Borrowing by Brokers and Dealers; Final Rule**

**12 CFR Parts 207, 220, 221, 224, and 265**

**Securities Credit Transactions; Proposed Rule**

**FEDERAL RESERVE SYSTEM**

**12 CFR Parts 207, 220, 221, 224 and 265**

**[Regulations G, T, U and X; Docket Nos. R–0905, R–0923 and R–0944]**

## Securities Credit Transactions; Borrowing by Brokers and Dealers

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board is adopting final amendments to Regulations G, T and U, the Board's securities credit regulations. These amendments are based on proposed amendments issued for comment by the Board in December 1995 (Docket R–0905), April 1996 (Docket R–0923) and November 1996 (Docket R–0944). The final amendments include the extension of Regulation U to cover lenders formerly subject to Regulation G and the elimination of Regulation G. The amendments reduce regulatory distinctions between broker-dealers, banks, and other lenders and implement changes to the Board's securities credit regulations to reflect changes to the Board's statutory authority under the Securities Exchange Act of 1934, as amended by the National Securities Markets Improvement Act of 1996. Conforming changes are also made to Regulation X, ''Borrowers of Securities Credit'' and the Board's Rules Regarding Delegation of Authority.

**DATES:** *Effective date:* April 1, 1998.

*Compliance date:* Compliance with the revised Regulation T (12 CFR part 220) is optional until July 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Oliver Ireland, Associate General Counsel (202) 452–3625; Scott Holz, Senior Attorney (202) 452–2966, Jean Anderson, Staff Attorney, (202) 452–3707, Legal Division; for the hearing impaired only, Telecommunications Device for the Deaf (TDD), Diane Jenkins (202) 452-3544.

**SUPPLEMENTARY INFORMATION:** Discussed below are final amendments to the Board's securities credit regulations based on three requests for comment issued in 1995 and 1996. The December 1995 request (Docket R–0905; 60 FR 63660, Dec. 12, 1995) covered only Regulation U and dealt with mixed collateral loans and the financing of purchases effected on a delivery-versus-payment basis. The April 1996 request (Docket R–0923; 61 FR 20399, May 6, 1996) dealt primarily with credit extended to customers by broker-dealers and other lenders, such as loan value for securities under Regulations G, T and U and the account structure of Regulation T. The November 1996 request (Docket R–0944; 61 FR 60168, Nov. 26, 1996) was issued in response to the changes in the Board's margin authority contained in the National Securities Markets Improvement Act of 1996 (NSMIA) and dealt primarily with borrowing by broker-dealers from any lender and the borrowing and lending of securities by broker-dealers.

The statutory changes from NSMIA regarding borrowing by broker-dealers require parallel amendments to the Board's various margin regulations and are discussed first. The second section deals with amendments to Regulation T and the third section with amendments to Regulations G and U. The final section describes a conforming change to Regulation X.

In a separate document published elsewhere in today's **Federal Register** the Board is issuing an advance notice of proposed rulemaking to solicit views on any further amendments to its margin regulations that should be proposed to complete the Board's periodic review of these regulations.

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## I. Borrowing By Broker-Dealers

### *A. All Regulations: Implementation of NSMIA*

The National Securities Markets Improvement Act of 1996 (''NSMIA'') [1] repealed section 8(a) of the Securities Exchange Act of 1934 (the ''34 Act'') and exempted the extension of credit to certain broker-dealers from the Board's margin regulations. Section 8(a) of the '34 Act had required broker-dealers obtaining credit against the collateral of exchange-traded equity securities to borrow from only other broker-dealers, banks that were members of the Federal Reserve System, or banks that agreed to abide by certain restrictions applicable to member banks. After the enactment of NSMIA, the Board proposed to delete § 220.15 of Regulation T and § 221.4 of Regulation U, the regulatory sections that implemented section 8(a) of the '34 Act. No adverse comments were received, and the Board is deleting the sections as proposed. The Board is also deleting the definition of *nonmember bank* from § 220.2 of Regulation T because the term was used only in § 220.15 of Regulation T. Finally, the Board is deleting its delegation of authority to the Reserve Banks to accept agreements filed under section 8(a) of the '34 Act.

NSMIA amended section 7 of the '34 Act to grant a transactional exemption

[1] Pub. L. 104–290, 110 Stat. 3416.

for credit extended to a broker-dealer ''to finance its activities as a market maker or an underwriter.'' NSMIA also granted a status exemption for all borrowing by broker-dealers ''a substantial portion of whose business consists of transactions with persons other than brokers or dealers.'' These statutory exemptions apply to borrowers, although the Board's margin regulations generally apply to lenders. It is therefore necessary for the Board to amend Regulations G, T and U to provide uniform treatment for broker-dealers whose borrowings are exempted from the Board rules under NSMIA.

1. Scope Section vs. the Definition of *Customer*

The Board sought comment on whether broker-dealers who qualify for an exemption from the Board's margin regulations when borrowing (''exempted borrowers'') should be excluded from the scope provisions in the first section of each regulation or the definition of *customer* in the second section of each regulation. All but two of the responsive commenters preferred the use of the scope section. The Board is amending the scope section to exclude loans to an ''exempted borrower'' and adding a definition of ''exempted borrower'' to cover those broker-dealers who have a substantial portion of their business conducted with persons other than broker-dealers (when they borrow for any purpose). The Board is also excluding an ''exempted borrower'' from the definition of ''customer'' in each regulation.

2. Appropriateness of Adopting a ''Substantial'' Test

The Board sought comment on whether it needs to provide a test to identify exempted borrowers. Only one commenter expressed its belief that a ''substantial'' test was not needed. The Board is adopting several safe harbor tests to provide guidance to lenders as to those broker-dealers who qualify under NSMIA for exempted borrower status.

One commenter stated that once the Board has decided on an appropriate test, but before it is implemented, the self regulatory organizations (SROs) [2] should survey their member firms to ascertain how many would be qualified. The Board is not adopting this suggestion as the Board believes that it would delay unnecessarily the ability of some exempted borrowers to take advantage of the Board's implementation of the NSMIA.

3. Test for Determining ''Substantial'' Customer Business

*a. Description of test:* The Board is adopting three alternative tests for broker-dealers to qualify as exempted borrowers. Exempted borrowers are being defined to include registered brokers or dealers or members of a national securities exchange who have at least: (1) 1000 active accounts for persons other than brokers, dealers, or persons associated with a broker or dealer; or (2) $10 million in annual gross revenues from transactions with such persons; or (3) 10 percent of their annual gross revenues derived from transactions with such persons. These tests will be included in the definition of ''exempted borrower'' in §§ 220.2 of Regulation T and 221.2 of Regulation U. The Board believes that these tests should not be excessively onerous to satisfy or monitor, but they should exceed the levels that an entity is likely to be willing or able to achieve artificially merely to obtain exempt credit. The first test provides a straightforward mechanism for large, customer-oriented firms to determine that they meet the substantial customer business requirement. The second test covers large firms that have made a substantial commitment to transacting business with persons other than broker-dealers, but do not have a large number of customer accounts. The third test compares the relative size of a broker-dealer's customer-related securities business to its overall securities business.

The Board believes these tests meet the statutory standard that a substantial portion of an exempted borrower's business consist of transactions with persons other than brokers or dealers. The Board believes that 10 percent of gross revenues is a substantial portion of a broker-dealer's business. Similarly, the Board believes that 1000 customer accounts is a substantial number of accounts, and therefore broker-dealers with this many customer accounts have a substantial portion of their business with persons other than broker-dealers. Finally, the Board believes that having $10 million in gross customer revenues is a substantial amount of revenue, and therefore these broker-dealers have a substantial portion of their business with customers.

Two of the three tests adopted by the Board today refer to ''revenue.'' Two commenters suggested that the Board adopt its own definition of ''revenue,'' although one of these commenters suggested that the Board build upon the definition of ''gross revenues from the securities business'' in section 16(9) of the Securities Investor Protection Act of 1970. The Board believes it would be more appropriate for broker-dealers to determine ''revenue'' in accordance with generally accepted accounting principles (GAAP). This should be easier than a new standard because broker-dealers are required under SEC rules to file annual reports that have been audited by an independent public accountant [3] and these reports are prepared according to GAAP. Although the Board is not specifying a methodology for comparing customer revenues to gross revenues, it expects that broker-dealers will develop appropriate methods for doing so and apply them consistently over time.

The Board believes that the statutory requirement that a substantial portion of an exempted borrower's business must consist of transactions with persons other than ''brokers or dealers'' should be interpreted to require that these transactions also be effected with persons other than ''persons associated with a broker or dealer'' as defined in the '34 Act.[4] This exclusion is included in the Board's definition of ''exempted borrower'' and will prevent a firm from qualifying as an exempted borrower by engaging in transactions only with related persons and corporate entities.

Several commenters responding to the Board's request for appropriate tests to identify exempted borrowers focused on the appropriate period of time over which to measure whether a broker-dealer has a substantial customer business. Some commenters suggested a broker-dealer should be deemed to have a substantial customer business if it meets one of the Board's tests on an annual basis while others suggested using a six month period. The Board believes an annual test is appropriate. Therefore, to meet any one of the tests, a broker-dealer must have met the test on average for a 12 month period. However, the Board will permit a newly registered broker-dealer to qualify as an exempted borrower if it meets one of the Board's tests after six months.[5]

The Board believes that broker-dealers with exempt borrowing status should reevaluate their status on an annual basis. If a broker-dealer determines that it is no longer an exempted borrower, it

[2] All SEC-registered broker-dealers belong to one or more SRO, such as the New York Stock Exchange, Chicago Board Options Exchange, or the National Association of Securities Dealers. If a broker-dealer belongs to more than one SRO, one of the SROs is designated as its examining authority and becomes its primary regulator at the SRO level. ''Examining authority'' is defined in § 220.2 of Regulation T.

[3] SEC Rule 17a–5(d); 17 CFR 240.17a–5(d).

[4] Section 3(a)(18) of the§'34 Act, 15 U.S.C. 78c(a)(18).

[5] *See* Section 220.3(j) of the revised Regulation T and § 221.3(e) of the revised Regulation U.

should notify its lenders before obtaining additional credit. Once a broker-dealer ceases to be an exempted borrower, credit obtained in reliance on the exempted borrower exception cannot be rolled over or renewed and the lines of credit should be adjusted appropriately as positions are liquidated. If the borrowing broker-dealer maintains its positions, the lender can continue to maintain the credit extended on an exempt basis. Once a borrowing broker-dealer is no longer an exempted borrower any new securities transactions requiring financing must be effected in conformity with the provisions of the Board's margin regulations other than the exempted borrower exception.[6]

*b. ''Safe harbor'' status of test:* The term *exempted borrower* will be defined to ''include'' the three tests described above. Each of the three alternatives therefore will be a non-exclusive safe harbor. This will allow broker-dealers who meet any one of the three tests to borrow on an exempt basis, but will not preclude the possibility of demonstrating a substantial customer business in other ways.

*c. Burden of proof for exempted borrower status:* A commenter stated that a lender should be able to rely on a borrowing broker-dealer's representation of its exempted status ''irrespective of what additional facts are known by the lender.'' Two other commenters recommended that lenders be able to use a ''good faith'' standard in accepting a borrowing broker-dealer's representation of its exempted status. The Board believes lenders should be required to apply a ''good faith'' standard in determining whether the Board's margin regulations apply to borrowings by specific broker-dealers. Under former Regulations G and U, ''good faith'' in accepting a representation required a lender to be ''alert to the circumstances surrounding the credit, and if in possession of information that would cause a prudent person not to accept the notice or certification without inquiry, investigates and is satisfied that it is truthful.''[7] The Board believes that in certain situations a lender may be able to determine whether a broker-dealer qualifies as an exempted borrower without requiring a statement from the borrower. Therefore, the Board is modifying the definition of *good faith* in § 221.2 of Regulation U (which will also cover lenders formerly subject to Regulation G) in a way that will allow lenders to use their judgment as to whether a statement is necessary. The Board is adopting the same definition of *good faith* in § 220.2 of Regulation T so that all lenders will be subject to a uniform standard.

4. Borrowing Exemption for Other Broker-Dealers

CBOE requested the creation of a borrowing exception in Regulations G and U for broker-dealers whose business consists of financing and carrying the accounts of registered market makers.[8] CBOE noted that while some broker-dealers that carry the accounts of market makers also engage in a general customer business and may qualify for the exempted borrower exception created under NSMIA, there are a few clearing firms virtually all of whose business consists of carrying the accounts of options market makers. CBOE explained that it has encouraged these firms to refrain from carrying the accounts of public customers so that such firms would not be subject to liquidation proceedings under SIPA, which CBOE believes would make the transfer of market maker accounts to other clearing firms more difficult. CBOE stated its belief that failure of these firms to obtain an exempt borrowing status under Regulations G and U will have negative consequences for the safety and liquidity of the options markets.

The Board is adopting an exception from certain of its margin rules for broker-dealers whose nonproprietary business is limited to transactions with market makers and specialists. This exemption will be found in § 221.5(c)(10) of Regulation U (which is being amended to cover all lenders other than brokers and dealers) and not in Regulation T. This means that broker-dealers who qualify for the exception will not be limited by the Board's margin regulations if they borrow from a lender other than another broker-dealer, but borrowings from broker-dealers will be subject to the provisions of Regulation T. CBOE did not request an exemption in Regulation T for loans to market maker clearing firms and the Board's authority to grant exemptions under Regulations G and U is greater than its ability to grant exemptions under Regulation T. NSMIA amended section 7(d) of the '34 Act (the section which applies to lenders other than broker-dealers and under which the Board has adopted Regulations G and U) to allow the Board to exempt such credit ''as it may deem necessary or appropriate in the public interest or for the protection of investors.'' The Board believes that establishing a Regulation U borrowing exception for broker-dealers actively engaged in clearing and carrying the accounts of market makers is appropriate in the public interest by enhancing market liquidity and protecting that liquidity in times of market volatility.

*B. Regulations G and U*

1. Need for Separate Regulations

The Board noted last year that the current structure of its margin regulations is based in part on the requirements of recently repealed section 8(a) of the '34 Act. Section 8(a) mandated a distinction between bank and nonbank lenders with respect to loans to broker-dealers. In light of the repeal of section 8(a), the Board sought comment on whether it is still appropriate to distinguish between Regulation G and Regulation U lenders and whether the regulations should be combined. No commenters believed there is a need for differing substantive regulation of banks and Regulation G lenders. The Board is merging Regulation G into Regulation U. Except as otherwise noted, substantive provisions of Regulation G have been incorporated into Regulation U.

On a technical level, the title of Regulation U is being changed to reflect its coverage of persons other than banks, brokers and dealers. Entities that were known as ''lenders'' under Regulation G will be known as ''nonbank lenders'' under Regulation U and the term ''lender'' will be used in Regulation U to refer to banks and former Regulation G lenders collectively. Similar but not identical provisions, such as the definition of ''affiliate'' in § 221.2 and the requirements for obtaining a purpose statement in § 221.3(c), have been left with their differences intact. The Board is soliciting comment via an advance notice of proposed rulemaking published elsewhere in today's Federal Register to determine whether and how to harmonize further the treatment of bank and nonbank lenders. The Board is also amending its rules regarding delegation of authority to eliminate references to Regulation G.

2. Special Purpose Loans to Broker-Dealers

Regulation U has always included an exemption for loans to broker-dealers in

[6] *See* Section 220.3(j) of the revised Regulation T and § 221.3(e) of the revised Regulation U.

[7] This language was found in the definitional section of each regulation (§ 207.2 of Regulation G and § 221.2 of Regulation U).

[8] Although CBOE refers to these member firms as ''market makers,'' the firms qualify as ''specialists'' under the '34 Act.

specific circumstances.[9] In response to the Board's request for appropriate amendments to Regulation U to reflect the broader exemption for broker-dealer borrowing contained in the NSMIA, two commenters stated their belief that the following special purpose loans to brokers and dealers found in § 221.5(c) of Regulation U no longer need to be listed separately: loans to specialists, OTC market makers, third market makers, block positioners, and odd-lot dealers; and distribution loans.[10] The Board is deleting these provisions as unnecessarily detailed in light of the NSMIA amendments to section 7 of the '34 Act and replacing them with a general exclusion for market makers, specialists and underwriters in §§ 221.5(c)(6) and 221.5(c)(7) of Regulation U based on the language of NSMIA. Lenders formerly subject to Regulation G will also be able to extend special-purpose loans to broker-dealers under all of the exemptions contained in § 221.5(c) of Regulation U. As proposed, the Board is adding the definition of *examining authority* currently found only in Regulation T to § 221.2 of Regulation U because the term appears in § 221.5(c)(9) of Regulation U.

3. Board Interpretations

Before its merger into Regulation U, Regulation G contained 14 Board interpretations codified as 12 CFR 207.101–207.114. Seven of these interpretations [11] were already codified in Regulations T or U as well and will be unaffected by the elimination of Regulation G. The interpretation concerning credit extended to purchase mutual shares before July 8, 1969, which has been codified at 12 CFR 207.107 (and 12 CFR 221.119), is being deleted as obsolete. The remaining six Regulation G interpretations are being moved to Regulation U.

The Board has reviewed the 25 interpretations in Regulation U (at 12 CFR 221.101–125) and decided to delete six of them. As noted in the previous paragraph, the interpretation at 12 CFR 221.119 is being deleted as obsolete. The same is true of the interpretation at 12 CFR 221.111, which deals with ''retention requirements'' eliminated by the Board the last time the margin regulations were comprehensively revised. The interpretations at 12 CFR 221.102 and 221.121 are being deleted because they have been superceded by NSMIA. Deletion of the interpretation at 12 CFR 221.123 (also codified in Regulation T at 12 CFR 220.126) is discussed below in the Regulation T section on the use of options in short sales and arbitrage transactions (*See* section II. B. 3). The interpretation at 12 CFR 221.124 (''Application of the single-credit rule to loan participations'') is being deleted because the Board amended the single-credit rule (§ 221.3(d) of Regulation U) in 1996 to incorporate this interpretation. The six remaining Regulation G interpretations will replace the six Regulation U interpretations being deleted today.

*C. Regulation T*

1. Broker-Dealer Accounts

The former Regulation T required that all financial relations between a broker-dealer and its customer (which may include another broker-dealer) be recorded in one of the eight accounts described in the regulation. The Board requested comment on whether the NSMIA eliminated the need for the following Regulation T accounts that were generally limited to broker-dealers: omnibus account (former § 220.10), broker-dealer credit account (former § 220.11), and the market functions account (former § 220.12). Most commenters requested retention of the omnibus account, which allows financing of a broker-dealer's customers' positions, for broker-dealers who do not have a ''substantial'' customer business but nevertheless finance some customer transactions. Most commenters also requested retention of the broker-dealer credit account, which permits certain extensions of credit to SEC-registered broker-dealers and allows certain other transactions to be effected without regard to the ''90-day freeze'' provision contained in the cash account.[12] In support of their request to retain the broker-dealer credit account, commenters cited the provisions of the account that may be used by persons who are not SEC-registered broker-dealers (and therefore not affected by the NSMIA) and stated their belief that the Board should not eliminate the ability of these persons to avail themselves of the account. These provisions allow foreign broker-dealers to buy and sell securities on a delivery-versus-payment (DVP) basis [13] and allow the use of this account for ''prime-broker'' customers.[14] Most commenters recommended repeal of the market functions account, which permits good faith credit to be extended to broker-dealers who perform a market function such as acting as a specialist, as long as the Board indicates that its action is based on its belief that the NSMIA exemptions covers all transactions previously recorded in this account.

The Board is eliminating the market functions account because the transactions previously permitted therein have been exempted from Board regulation by the NSMIA, with one exception.[15] The Board is also deleting the definitions of *in or at the money, in the money, overlying option, permitted offset*, and *specialist joint account* from § 220.2 of Regulation T because the terms were used only in the market functions account. Consistent with its action regarding customer accounts,[16] the Board believes that additional flexibility for broker-dealers can be achieved by merging the omnibus account into the broker-dealer credit account. The different types of credit are described in separate paragraphs; the SEC and/or the SROs may require that broker-dealers keep separate records within this account, for example to segregate omnibus credit (for customers) from other types of (proprietary) broker-dealer credit. The provision allowing certain ''prime broker'' transactions to be effected in the broker-dealer credit account will be moved to the new good faith account to reflect the fact that these transactions are effected on behalf of non-broker-dealer customers. Former § 220.11(b), which defined the term *affiliated corporation*, is being moved to the definitional section of the regulation (§ 220.2).

A commenter recommended that the Board allow foreign broker-dealers to open omnibus accounts at U.S. broker-dealers. This practice was permitted under Regulation T until 1969, as long as the foreign broker-dealer certified that it made its customers margin their transactions in conformity with the requirements of Regulation T. The Board then amended Regulation T to require that the broker-dealer obtaining omnibus credit be registered with the SEC and therefore subject to the jurisdiction of the SEC and SROs to

[9] *See* Section 221.5(c) of Regulation U.

[10] These loans were described in paragraphs (c)(6), (7), (10), (11), (12) and (13) of former § 221.5 of Regulation U.

[11] The Regulation G citations for these interpretations were 12 CFR 207.102, 207.103, 207.106, 207.108, 207.110, 207.113, and 207.114.

[12] Section 220.8(c) of Regulation T.

[13] Former § 220.11(a)(1) of Regulation T.

[14] For a description of ''prime-broker'' arrangements, see SEC no-action letter of January 25, 1994, reprinted in *CCH Fed. Sec. L Rptr* ¶ 76,819.

[15] See 220.12(b)(2)(ii) of former Regulation T provided that the margin for the purchase or short sale of a security that does not qualify as a specialist or permitted offset position shall be the margin required by the Supplement. Purchases on credit and short sales of such securities by specialists will henceforth be required to be effected in the margin or good faith account.

[16] See the discussion in section II. A. 2. d of the Supplementary Information.

ensure Regulation T compliance for customer margin transactions. The Board believes that it is extremely difficult to ensure that an unregulated entity complies with its regulations and does not believe it is appropriate to impose Regulation T on foreign broker-dealers' transactions with customers. Therefore, the Board is not amending the omnibus account at this time.

In response to the Board's request for comment on appropriate amendments to Regulation T to reflect the changes contained in the NSMIA, one commenter recommended incorporation of § 221.5 of Regulation U (''Special purpose loans to brokers and dealers'') into Regulation T, so that broker-dealers may make loans to other broker-dealers on the same basis as other lenders. The Board is adding those portions of § 221.5 of Regulation U that are not already in Regulation T to the broker-dealer credit account. These provisions allow the following types of credit without regard to other Regulation T requirements: credit to finance the purchase or sale of securities for prompt delivery or to finance securities in transit, if the credit is to be repaid upon completion of the transaction, and intraday credit. The broker-dealer credit account is also being amended to allow its use for loans to exempted borrowers, market makers, specialists, and underwriters for those broker-dealers who wish to record such credit in a Regulation T account.

2. Borrowing and Lending of Securities

The Board has regulated the borrowing and lending of securities to prevent a customer from evading the margin requirements by recharacterizing a margin loan from the broker-dealer to the customer (which requires a deposit of 50 percent of the stock's value by the customer) as the lending of securities by the customer to the broker-dealer (in return for which the customer can receive 100 percent of the stock's value in cash from the broker-dealer). With the exception of U.S. government securities,[17] former Regulation T on its face applied to any loan of securities in which a creditor was either borrowing or lending. The Regulation T provision that covers borrowing and lending securities (formerly § 220.16; now § 220.10) has traditionally contained collateral requirements (the ''collateral test'') and limited the situations for which securities may be borrowed or lent (the ''purpose test''). With the adoption of the good faith account, Regulation T restrictions on the borrowing and lending of securities will only apply to those securities not entitled to good faith loan value.

*a. Collateral test:* Regulation T has reflected industry practice by requiring 100 percent collateral against a borrowing of securities, with the collateral limited to cash and cash equivalents. Although the Board believes requiring 100 percent liquid collateral is consistent with prudent securities lending practices, it sought comment on whether the existing collateral requirements are necessary for Regulation T purposes and proposed three alternatives. Two of the alternatives would retain the 100 percent collateral requirement. Of those two alternatives, one would allow any security as collateral as long as it was valued at its regulatory loan value[18] and the other would allow any collateral without specifying limits as to how the collateral is to be valued. The third alternative would eliminate the collateral requirements in their entirety.

No commenter opposed an expansion of the types of collateral permitted for borrowing and lending securities. Two commenters supported allowing all securities at their regulatory loan value and three commenters supported allowing all collateral. Total elimination of collateral requirements in connection with the borrowing and lending of securities was explicitly supported by four commenters (including two who also supported one of the other alternatives) and specifically opposed by two commenters. One of the opposing commenters gave no reason for its opposition, while the other expressed dissatisfaction with the purpose test and suggested that the collateral test was necessary to make up this deficiency. Commenters supporting elimination of the collateral requirements stated that the purpose test adequately limits circumvention of the margin requirements by limiting the situations in which securities may be lent. The commenters stated that the current collateral requirement of 100 is at odds with the 50 percent requirement for margin loans on equity securities. Commenters also noted that the SEC's customer protection rule specifies acceptable collateral for securities lending transactions conducted by broker-dealers with customers. The Board notes that in addition to the SEC's customer protection rules and the reasons cited above, the SROs may choose to impose safety and soundness requirements on the borrowing and lending of securities by their member firms. The Board is eliminating the collateral requirements for borrowing and lending securities.

*b. Purpose test:* In addition to the collateral test, Regulation T also contains a ''purpose test'' generally limiting the borrowing or lending of securities by broker-dealers to situations involving short sales or ''fails'' to receive securities needed for delivery. Although the Board did not specifically propose to amend the purpose test, several commenters recommended modifications to the purpose test. These recommendations included: (1) Broadening the exception added last year for foreign securities to cover those that trade in the United States, (2) broadening the exception added last year to permit borrowing of securities before a short sale has occurred to cover fail transactions and to allow more time to borrow foreign securities, and (3) expanding the purpose test to cover dividend reinvestment plans.

(1) Foreign Securities Exception

Last year the Board created an exception to its general rule regarding the borrowing and lending of securities for certain foreign securities. Under former § 220.16(b) of Regulation T, foreign securities that are not publicly traded in the United States could be lent to foreign persons without regard to the purpose test and on any collateral.[19] Although several commenters responding to the Board's proposal of this exception in 1995 objected to the fact that it did not cover foreign securities listed on a U.S. securities exchange or the Nasdaq Stock Market, other commenters, including U.S. securities exchanges, stressed the importance of equal treatment in this area for all securities that are publicly traded in the United States. One commenter responding to last year's request for public comment repeated its earlier comment requesting that the Board eliminate this limitation on the foreign security exception and added an alternative request that the Board narrow this limitation to U.S. traded foreign securities being lent for short sales effected in the United States. The

[17] Borrowing and lending of government (exempted) securities has been permitted in the government securities account without regard to the borrowing and lending of securities provision of Regulation T.

[18] The regulatory loan value of a security is the difference between 100 percent and the margin required by the Supplement to Regulation T (formerly § 220.18, now § 220.12).

[19] When the foreign securities exception was adopted, it permitted the use of any legal collateral, but required that the collateral's value be at all times at least equal to the value of the securities being lent. The requirement for 100 percent collateral against a loan of these securities is being eliminated in conjunction with the Board's elimination of the collateral test for all securities lending transactions.

commenter pointed out that (1) the foreign securities exception only applies to securities lent to foreign persons and therefore ''equal treatment'' for all U.S. traded securities is already assured for securities lent to U.S. persons; (2) denying the foreign securities exception to U.S. traded foreign securities could create a disincentive to foreign companies considering a dual listing arrangement in the United States; and (3) U.S. broker-dealers are disadvantaged vis-a-vis foreign broker-dealers if their ability to lend foreign securities is curtailed once those securities are listed for trading in the United States. In light of these considerations, the Board is amending the foreign securities exception from the purpose test to cover all foreign securities without regard to whether the securities are traded in the United States.

(2) ''Pre-borrowing''

Last year the Board also amended Regulation T to allow the borrowing of a security up to one standard settlement cycle [20] in advance of the trade date of a short sale. Two commenters requested that the Board allow creditors to borrow securities three days before the trade date of a transaction they reasonably anticipate will result in a fail to deliver. The Board sees no reason to maintain a different time frame for borrowings to accommodate fails versus short sales, as long as the fail is not intended to evade the requirements of Regulation T. The last sentence of § 220.10(a) of Regulation T (former § 220.16(a)) is therefore being amended to cover fails as well as short sales.

Three commenters also requested that the Board allow creditors to borrow foreign securities with extended settlement periods (i.e., more than three business days) up to one foreign settlement period in advance of the trade date of a short sale or fail to deliver transaction. The Board is not adopting such an amendment. The three day period adopted by the Board last year was an attempt to balance the need to complete short sales and fail transactions while guarding against the potential for manipulative transactions such as squeezes. The Board does not believe there is a compelling reason to treat foreign securities differently.

(3) Dividend Reinvestment and Purchase Plans

Last year, the Board declined to adopt a suggestion by commenters that the purpose test for borrowing and lending securities be expanded to allow creditors to borrow securities in order to take advantage of dividend reinvestment programs. Three commenters in this docket repeated the suggestion. The Board continues to believe that allowing a broker-dealer to borrow customer securities to take advantage of a dividend reinvestment and purchase plan could allow customers to obtain greater credit than could be obtained via a conventional margin loan and unlike borrowing to cover a short sale or fail is not necessary for efficient functioning and clearing of transactions in the securities market. Therefore, the Board is not amending Regulation T to accommodate dividend reinvestment and purchase plans.

*c. Exempted borrowers:* In its request for comment on appropriate amendments to implement the changes contained in the NSMIA, the Board stated that it appeared that Regulation T's requirements for borrowing and lending securities no longer applied to the borrowing and lending of securities between two exempted borrowers. The Board requested comment on how to amend the rules regarding borrowing and lending of securities to reflect the NSMIA. Although the SROs that commented responded by stating their belief that borrowing and lending of securities by brokers and dealers should still be subject to a ''purpose test,'' all other responsive commenters supported the Board's view that Regulation T no longer appears to apply to securities lending transactions between exempt broker-dealers. Three commenters suggested that Regulation T also should not apply when only one party to the securities lending transaction is an exempt broker-dealer; however, the commenters were not in agreement as to how this principal should be applied. Following the Board's stated logic that Regulation T has covered the borrowing and lending of securities to prevent a customer from lending securities against 100 percent cash in order to evade the 50 percent maximum otherwise allowed, the Board is amending Regulation T by adding a new paragraph (c) to the section entitled ''Borrowing and lending securities'' (§ 220.10) to exclude a broker-dealer that is an exempted borrower from the restrictions of Regulation T if it is lending securities, but not if it is borrowing securities. In order to prevent circumvention of the Board's margin rules for nonexempted equity securities, a broker-dealer that is an exempted borrower and is therefore entitled to lend securities without regard to Regulation T will not be permitted to borrow securities from a customer or a broker-dealer that is not an exempted borrower in order to relend them unless the relending is for a permitted purpose such as a short sale or fail transaction.

## II. Regulation T

### *A. Debt Securities and Portfolio Margining*

1. Loan Value

Debt securities listed on a national securities exchange have always had loan value under Regulation T.[21] Beginning in 1978, the Board created the concept of an ''OTC (over-the-counter) margin bond'' to allow loan value for unlisted debt securities that meet Board established criteria. These criteria have been expanded over the years. Nevertheless, not all OTC debt securities qualify as ''OTC margin bonds.'' Debt securities that are neither exchange-listed nor OTC margin bonds have no loan value in a margin account.

*a. Good faith loan value for all non-equity securities:* Last year, the Board amended Regulation T to include all investment-grade debt securities under the definition of *OTC margin bond* and therefore ensured good faith loan value for these securities.[22] At the same time, the Board proposed to grant good faith loan value to all non-equity securities.[23] The Board noted that banks and other lenders are not subject to the Board's margin requirements when extending credit on non-equity securities.

The Board's proposal was supported by all responsive commenters except for one commenter. This commenter argued that broker-dealers have a ''salesman's stake'' not shared by non-broker-dealer lenders and this difference justifies the continuation of denying loan value to certain non-investment-grade debt securities. On the other hand, another commenter stated that there is no policy justification for distinguishing between broker-dealers and other U.S. lenders and several commenters noted that allowing good faith loan value for non-equity securities would increase the

[20] The phrase ''standard settlement cycle'' refers to SEC Rule 15c6–1 (17 CFR 240.17c6–1) which currently sets this period at three business days.

[21] From 1934 until 1968, exchange-listed debt securities were subject to the same margin requirements as exchange-listed equity securities. Since 1968, marginable debt securities have been subject to a *good faith margin* requirement.

[22] Many investment-grade debt securities were already covered under the existing definition of ''OTC margin bond.'' However, some classes of debt securities, such as domestic debt securities exempt from SEC registration, were unable to qualify under the existing definition.

[23] Formerly, debt securities met the definition of *margin security* and were entitled to good faith loan value only if they were registered on a national securities exchange, rated investment-grade, or otherwise qualified as *OTC margin bonds.*

ability of U.S. broker-dealers to compete with other domestic and foreign lenders.

The Board is amending Regulation T as proposed to permit broker-dealers to extend good faith credit against all non-equity securities. Broker-dealers should be no less competent to determine the loan value of non-investment-grade debt securities than a bank or other lender would be. In addition, self regulatory organizations (SROs) such as the New York Stock Exchange will still be able to set margin requirements for non-equity security transactions effected by their member brokerage firms. To implement this change, the Board is amending § 220.2 of Regulation T by deleting the definition of *OTC margin bond,* replacing paragraph (3) of the definition of *margin security* (currently ''any OTC margin bond'') with ''any non-equity security'' and changing the Supplement [24] that provides good faith loan value for these securities to refer to any ''non-equity security'' where the regulation currently specifies ''registered nonconvertible debt security or OTC margin bond.'' The Board is also adding the word ''equity'' to paragraph (e) of the Supplement to make clear that the only securities that have no loan value under Regulation T are nonmargin nonexempted equity securities.

*b. ''Equity-linked'' and preferred securities:* The Board proposed to define *non-equity security* as ''a security that is not an equity security.'' [25] Under the proposed definition, debt securities that are equity-linked securities still would be afforded good faith loan value. The Board also sought comment on whether it should modify this proposed definition to exclude ''equity-linked securities,'' and if so, what securities should be excluded. Modification of the proposed definition of *non-equity security* to exclude ''equity-linked'' securities would result in their being treated as equity securities and therefore subject to either a 50 percent or 100 percent margin requirement.

Comment on the appropriate treatment of equity-linked securities was mixed. Several commenters stated that equity-linked securities trade like equity securities and are often priced in reliance on equity securities and therefore should be subject to the same margin requirements as equity securities.[26] Other commenters stated that it was unnecessary for the Board to exclude equity-linked securities from its proposed definition of *non-equity security* in light of the SEC's authority to elaborate on the definition of ''equity security'' under the '34 Act to address questions that may arise regarding novel or hybrid products whose status might otherwise be unclear. Staff of the SEC commented that equity-linked securities, because they present many of the same type of risks as equity securities, should be treated as equity securities for purposes of the Board's margin regulations. SEC staff further commented that they view a equity-linked security as one under which any part of the issuer's obligations is contingent upon, or requires the delivery on an optional or forward basis of, an equity security or group or index of equity securities. The Board is adopting the definition of the term *non-equity security* that was proposed, with the result that equity-linked securities which do not meet the '34 Act definition of *equity security* will be entitled to good faith loan value. The Board will defer to the SEC on the appropriate definition of *equity security*.

One commenter suggested that preferred stock be margined at a good faith level because its dividend rate is generally tied to current interest rates. Another commenter sought confirmation that the term *non-equity security* would include all mortgage and other asset-backed securities, including debt instruments, trust certificates, or partnership/participation interests. As noted above, the Board is deferring to the SEC on the exact parameters of the definition of *equity security*.

2. Good Faith Account

*a. Appropriateness:* In addition to proposing good faith loan value for all non-equity securities, the Board proposed creating an account separate from the margin account described in § 220.4 of Regulation T to effect transactions involving these securities. The new account would allow purchases and sales of non-equity securities on a credit or cash basis, repurchase and reverse repurchase agreements on non-equity securities and the purchase or sale of options on non-equity securities. All commenters supporting good faith loan value for all debt securities supported creation of a new account. The Board is adopting its proposal for a non-equity account and, as discussed below, is merging it with the government securities account and other accounts and naming it the ''good faith account.'' The good faith account replaces the government securities account formerly found in § 220.6 of Regulation T.

*b. Prohibition on transactions causing a deficit:* The Board has generally viewed section 7 of the '34 Act as prohibiting broker-dealers from extending purpose credit [27] that is either unsecured or secured by collateral other than securities. In proposing to create a new non-equity account, the Board included a prohibition on transactions that would cause the account to liquidate to a deficit (i.e., cause the market value of the collateral to fall below the customer's debit balance). This proposed provision was included to prevent broker-dealers from extending unsecured purpose credit, which might be an evasion of the good faith margin requirement. Commenters generally opposed the proposal to prohibit transactions that would cause the account to liquidate to a deficit, stating that the restriction would seriously undermine the usefulness of the proposed account for transactions in fixed-income securities because it would present substantial uncertainty with respect to bilateral extensions of credit such as reverse repurchase agreements, which may liquidate to a deficit, and would continue to place broker-dealers at a disadvantage vis-a-vis banks and other lenders.

Several commenters argued that section 7(c)(1)(B)(ii) of the '34 Act does not prohibit unsecured credit if the credit is either ''not for the purpose of purchasing or carrying securities'' or not extended for the purpose of ''evading or circumventing'' the Board's rules regarding credit secured by securities. This reading of the statute allows broker-dealers to extend unsecured purpose credit if the Board concludes that such credit is not for the purpose of evading or circumventing its rules regarding secured credit. The Board believes that this interpretation is consistent with the statute and therefore is eliminating the proposed ''liquidate to a deficit'' prohibition for the good faith account. The Board believes that permitting transactions in a non-equity securities account to liquidate to a deficit is not necessarily an evasion or circumvention of the rules permitting

[24] The Supplement, which contains the margin requirements for various securities transactions, is the last section of each of the Board's margin regulations. The Supplement was formerly § 220.18; the Supplement under the revised Regulation T adopted today is § 220.12.

[25] The term *equity security* is defined in section 3(a)(11) of the Securities Exchange Act of 1934 (15 U.S.C. 78(c)(a)(11)).

[26] Some of these commenters included convertible debt securities in their discussion of the types of ''equity-linked'' securities they believe should be subject to equity margin requirements. The Board has always treated convertible debt securities as equity securities because section 3(a)(11) of the Securities Exchange Act of 1934 defines ''equity security'' to include a security convertible into an equity security.

[27] ''Purpose credit'' is defined as credit for the purpose of buying, carrying, or trading in securities.

good faith loan credit for these securities as a lender extending good faith credit may consider factors other than the immediate liquidation value of the collateral.

*c. Money market and other financial instruments:* In commenting on the Board's proposal to grant good faith loan value to non-equity securities, many commenters sought good faith loan value for money market and other financial instruments such as bankers acceptances, certificates of deposit, and commercial paper when used in a margin account.[28] In effect, commenters argued that broker-dealers should be able to consider the collateral value of these financial instruments in extending good faith credit on non-equity securities. The Board believes section 7 of the '34 Act permits the extension of unsecured purpose credit if the Board concludes that such credit is not for the purpose of evading or circumventing its rules regarding credit collateralized by securities. This reasoning also applies to purpose credit secured by collateral that may not meet the definition of a ''security'' in the '34 Act. The Board believes that allowing good faith loan value for all assets other than equity securities in the new good faith account does not evade or circumvent its rules requiring good faith margin for transactions involving non-equity securities. The Board therefore is expressly allowing the inclusion of such assets in the good faith account described below.

*d. Merging non-equity account into other accounts:* The Board sought comment on merging the non-equity account into the government securities account (former § 220.6) and/or the nonsecurities credit account (former § 220.9). Several commenters supported merging the proposed non-equity account into the government securities account. One commenter opposed merging the new account into any existing account because it believes transactions in the proposed non-equity account should be subject to a requirement for timely payment, a requirement not imposed for the other two accounts suggested by the Board. A second commenter opposed allowing purpose and non-purpose credit in the same account, although another commenter noted that purpose and nonpurpose credit could be segregated within the account.

In order to provide maximum flexibility, the Board is merging all three accounts for purposes of Regulation T. The new account will be called the ''good faith account'' and will be described in § 220.6 of the revised Regulation T. Creditors may keep separate records for each type of credit extended within the account. In addition, the Board is amending Regulation T to allow other customer transactions for which the Board does not specify margin or payment requirements to be effected in the good faith account. These include all transactions currently effected in the arbitrage account[29] and those transactions effected in the broker-dealer credit account pursuant to a ''prime brokerage'' arrangement.[30] This merger of accounts will leave most customers with three possible accounts: a cash account, a margin account (with the possibility of a linked special memorandum account) and a good faith account.[31] The good faith account could be used for transactions involving securities entitled to good faith margin (including the borrowing and lending thereof), as well as nonpurpose credit, bona fide arbitrage,[32] and prime broker transactions. Rules of the SROs and individual brokerage firms may require separation of specific types of credit within the new account for their own administrative or regulatory purposes, but this would not be required by Regulation T. All credit extended by a broker-dealer to a non-broker-dealer customer that is either subject to good faith margin or not specifically subject to any Regulation T margin requirement could be recorded in the new account. Transactions formerly effected in the margin account could continue to be effected there, and the restrictions contained in the margin account, such as the requirement for timely deposit of payment or margin, would continue to apply to transactions conducted in that account.

3. Portfolio Margining

Regulation T prescribes margin requirements for each security held in a margin account. Certain positions involving more than one security, such as a long position in a convertible bond coupled with a short position in the underlying security, are defined as a single position and given lower margin requirements than would be required individually. Any combination of securities not specifically identified in Regulation T must be margined without regard to any possible offsetting positions. The Board noted last year that commenters have requested greater flexibility to engage in cross-margining (using financial futures to offset securities margin requirements) and more broadly ''portfolio'' or ''risk-based'' margining of customer assets. The Board identified several provisions in Regulation T that are impediments to the possible adoption of a portfolio margining system. These include: the definition of *good faith margin*, the requirement that items in one account not be considered in meeting requirements in another account (see § 220.3(b), ''Separation of accounts''), and the special memorandum account (SMA).

*a. Portfolio margining as an alternative to Regulation T:* The Board sought comment on any implementation problems that might arise with a partial or complete move to portfolio margining, including the need for delaying the effective date of any final rule in order to allow the SROs time to amend their rules. A commenter suggested an amendment to Regulation T that would permit a creditor, in lieu of compliance with Regulation T, to comply with any portfolio margining system permitted by an SRO under SEC-approved rules. This would not require a delay between Board action and SRO implementation. The Board is amending the scope provision of Regulation T[33] to allow portfolio margining to be developed by the industry and approved by the SEC as an alternative to

[28] Money market and other financial instruments that may not meet the definition of ''security'' in the '34 Act are currently valued at good faith when used as collateral for nonpurpose credit in the nonsecurities credit account. These instruments currently have no loan value when used in a margin account.

[29] The arbitrage account was formerly found in § 220.7 of Regulation T.

[30] This provision was formerly found in § 220.11(a)(5) of Regulation T. ''Prime brokerage'' is an arrangement involving a customer and at least two broker-dealers, one of whom is the ''prime broker.'' Transactions on behalf of the customer are effected by the non-prime broker-dealer (known as an ''executing broker'') and immediately sent to the prime broker. The prime broker enforces Regulation T vis-a-vis the customer for all transactions, wherever executed. The broker-dealer credit account is used by the executing broker to record the customers transactions because recordkeeping requirements are less onerous than if the transaction were recorded in a cash or margin account. The new good faith account will eliminate the need to record these customer transactions in the broker-dealer credit account.

[31] Customers who are broker-dealers will be able to have a fourth possible account if they take advantage of the broker-dealer credit account.

[32] The Board is not modifying the scope of transactions that may be effected as ''bona fide arbitrage.'' One commenter suggested permitting margin-free arbitrage that is not based on locking in a profit from a current disparity in the prices of the two securities, and lesser or no margin on transactions that would qualify as arbitrage if they had been effected simultaneously. The Board is not adopting these two suggestions, as they do not comport with the underlying policy of the arbitrage account of allowing special credit for transactions that perform a market function by eliminating real-time disparities in pricing between identical or closely related securities.

[33] Section 220.1(b) of Regulation T.

compliance with Regulation T by broker-dealers.

*b. Definition of good faith margin:* The Board stated that a revised definition of *good faith margin* [34] is a necessary prerequisite to eventual implementation of a portfolio margining system. The Board requested comment on a proposed amendment that would modify the definition of *good faith margin* by deleting references to a specific security and eliminating the requirement that the credit be extended without regard to the customer's other assets.[35] This change would facilitate portfolio margining on good faith basis. Almost all of the responsive commenters supported this proposal. One commenter suggested that the Board determine what type of portfolio margining systems should be adopted before modifying the definition of good faith. The Board believes that broker-dealers will be afforded greater flexibility by changing the definition of good faith at this time while permitting portfolio margining to be developed and implemented at a later date when agreed upon by the SEC and SROs. The Board therefore is adopting a definition of ''*good faith* with respect to margin'' in § 220.2 of Regulation T that substantially follows the proposal.

The Board also sought comment on whether an amended definition of good faith should be limited to the proposed non-equity account or made applicable for all accounts. All of the commenters expressing an opinion supported modifying the definition of good faith for all accounts. The new definition of ''*good faith* with respect to margin'' in § 220.2 of Regulation T will cover transactions recorded in the good faith account. The Board is retaining the requirements of the former definition of *good faith margin* for transactions recorded in the margin account by adding a new paragraph, ''sound credit judgment'' (§ 220.4(b)(8)), to the provisions concerning the margin account. Allowing a broker-dealer to determine margin requirements by taking into account the customer's other unrelated assets or securities positions is inconsistent with limiting the loan value of equity securities to 50 percent of its current market value. Therefore, securities entitled to ''good faith'' margin treatment, if used in a margin account, must be valued without regard to the customer's other assets and securities positions held in connection with unrelated transactions.

*c. Separation of accounts:* Section 220.3(b) of Regulation T, ''Separation of accounts,'' generally provides that requirements for an account may not be met by considering items in any other account.[36] Consistent with its action last year to allow financial futures to serve in lieu of margin for securities options pursuant to SRO rules, the Board proposed to modify the separation of accounts provision to allow commodities and foreign exchange positions in the nonsecurities credit account to be considered in calculating margin for any securities transaction in the proposed good faith account for non-equity securities transactions or the margin account for any securities transaction. Responsive commenters supported the Board's proposal. The Board is adopting the amendment to § 220.3(b) of Regulation T as proposed.

The Board also invited comment on whether it should modify further the separation of accounts provision in § 220.3(b) of Regulation T to facilitate portfolio margining. Several commenters pointed out that the separation of accounts provision will have to be relaxed if portfolio margining is made part of Regulation T. One commenter supported complete elimination of the separation of accounts provision, while two other commenters did not believe broker-dealers should be required to link accounts, but should be permitted to do so if they wish. The Board is not taking any additional action with respect to § 220.3(b) of Regulation T at this time, as the development of portfolio margining systems can be accommodated as an alternative to compliance with the account-based system contained within Regulation T, as is provided in § 220.1(b)(3)(i) of the revised regulation. Further, the Board notes that the reduction in the number of customer accounts resulting from combining the proposed good faith account with the arbitrage, government securities, nonsecurities credit and prime brokerage portion of the broker-dealer credit account will result in fewer situations in which the separation of accounts provision of Regulation T will apply.

*d. Retention of the special memorandum account:* Section 220.5 of Regulation T provides that a broker-dealer may maintain a special memorandum account (SMA) for a customer in conjunction with the customer's margin account and use the SMA to hold customer moneys not required to be maintained in the margin account. The Board sought comment on eliminating the SMA in conjunction with adoption of a portfolio margining system. Several commenters expressed support for retaining the SMA and one commenter noted that the SMA could be recreated by use of the cash account, which it believes would be less efficient. This commenter also pointed out that the concept of the SMA would not be necessary under a portfolio margining system because initial and maintenance margin requirements would be the same. Another commenter wanted broker-dealers to be able to establish multiple margin accounts for the same person in cases other than those identified in Regulation T [37] and operate separate SMAs for each account.

The Board is not making any changes to the SMA at this time. The SMA will continue to be available for use in conjunction with a margin account, but will not be available for use in conjunction with a good faith account. The concept of locking in ''buying power'' from the appreciated value of securities held in an account or monies not required by Regulation T is inconsistent with the revised definition of ''*good faith* with respect to margin'' which is based on the creditor's judgment of the customer's creditworthiness and collateral at a given time. The issue of using an SMA in connection with adoption of portfolio margining systems may be addressed by the SEC, SROs and securities industry.

*B. Equity Securities and Options*

1. Domestic Stocks

Prior to the adoption of today's amendments, the following United States traded stocks [38] were subject to the Board's 50 percent margin requirement: [39] (1) Stocks traded on a

[34] Margin is the amount of equity a customer must have against a given position and the complement of the security's loan value. A margin requirement of 60 percent for a security is the same as assigning it a loan value of 40 percent. In determining *good faith margin,* a broker-dealer is assigning a ''good faith'' loan value to a specific non-equity security.

[35] The Board proposed to modify the current definition to read as follows: ''*good faith margin* means the amount of margin which a creditor would require in exercising sound credit judgment.''

[36] An exception is provided for maintaining a special memorandum account (SMA) with a margin account.

[37] The Board allows multiple margin accounts for a single customer under conditions found in § 220.4(a)(2) of Regulation T. These margin accounts may be operated with separate SMAs.

[38] Stocks that are not traded in the United States are subject to Regulation T (although they are not covered by Regulations G and U) and their margin status is discussed in section II.B.2 of the Supplementary Information.

[39] Although section 7 of the '34 Act instructs the Board to limit the amount of credit that can be extended against nonexempted securities, it does not require the Board to make individualized determinations for every security.

Section 7 originally mandated that the Board prescribe rules with respect to the amount of credit that may be extended on ''any security (other than

national securities exchange, (2) stocks in the National Market tier of the Nasdaq Stock Market (''NMS'' securities), and (3) stocks in the Small Capitalization (''SmallCap'' securities) tier of the Nasdaq Stock Market that are identified by the Board as ''OTC margin stocks.'' These stocks were subject to the same margin requirements regardless of whether the lender is a broker-dealer, bank, or other lender.[40]

In its request for comment issued last year, the Board noted that although the definition and treatment of domestic margin stocks is currently the same in Regulations G, T and U, nonmargin stocks are treated differently at broker-dealers (where they have no loan value) than at banks and other lenders (where the Board's margin rules do not limit their value). The Board sought comment on the possibility of expanding the types of securities with loan value at broker-dealers by amending the definition of *margin security* in § 220.2 of Regulation T to cover all domestic equity securities that have a ''ready market'' for purposes of the SEC's net capital rule.[41] This would cover all Nasdaq SmallCap stocks[42] and thousands of additional over-the-counter (''OTC'') stocks not traded on Nasdaq. In light of the disparate treatment of nonmargin stock at broker-dealers versus other lenders, the Board also sought comment on the appropriate definition of *margin stock* under Regulations G and U and on possible solutions to the current structure of its margin regulations that results in an increase in burden for lenders other than broker-dealers whenever burden is reduced for broker-dealers. The Board suggested its regulations might be amended to cover more securities for broker-dealers and fewer securities for banks and other lenders.

The proposal to make all domestic ''ready market'' stocks marginable under Regulation T was supported by four commenters and opposed by four commenters, while another commenter stated its belief that further clarification is needed before such an amendment could be adopted. Three commenters suggested expanding the definition of *OTC margin stock* at least to cover all stocks listed on the Nasdaq Stock Market.

Regulation T has always included all securities (other than options) registered on any national securities exchange as margin securities.[43] In allowing loan value for certain over-the-counter securities, the Board has attempted through its criteria to ensure similar levels of liquidity and transparency.[44] The NASD has recently raised listing requirements for both the National Market and SmallCap tiers of the Nasdaq Stock Market.[45] The minimum standards for listing on Nasdaq (i.e., the SmallCap tier) generally equal or exceed those of the American, Boston, Chicago, Pacific, and Philadelphia Stock Exchanges. The Board believes that Nasdaq SmallCap issues, which meet or exceed many national securities exchange requirements, should not be denied margin status solely because they are not traded on an ''exchange.'' Therefore the Board is including all Nasdaq listed issues in its definition of margin security.[46] The Board's quarterly OTC List will no longer be necessary for broker-dealers because the Board will no longer choose which Nasdaq stocks are marginable, but will instead rely on Nasdaq listing standards to the same extent it relies on the listing standards of U.S. securities exchanges.

SEC staff have asked for a delay in the effective date of the amendment giving 50 percent loan value to all Nasdaq securities to address possible sales practice issues. The Board is delaying the effectiveness of this provision until January 1, 1999 and will cease publication of its quarterly OTC List for U.S. traded securities after publication of the November 1998 list.[47] The Board may revisit the issue of allowing credit on other equity securities at a later date.

2. Foreign Stocks

The Board has been identifying those foreign equity securities that are eligible for margin at broker-dealers since 1990 by publishing a *List of Foreign Margin Stocks* (''Foreign List'') on a quarterly basis. As in the case of OTC margin stocks, the Board has based its decisions on criteria aimed at ensuring liquidity and price transparency for all margin securities. Last year, the Board amended its criteria for foreign margin stocks to encompass foreign stocks deemed to have a ''ready market'' under the SEC's net capital rule.[48] This action allowed the inclusion of hundreds of additional foreign stocks on the Foreign List, based on a ''no action'' position from the SEC that effectively treats all stocks on the Financial Times/Standard & Poor's World Actuaries Indices (''FT/S&P Indices'') as having a ''ready market'' for capital purposes.[49] Although there was considerable overlap between stocks on the FT/S&P Indices and the Board's Foreign List, there were also a significant number of foreign stocks that appeared on the Foreign List but not the FT/S&P Indices. The Board sought comment on whether it should phase

an exempted security) registered on a national securities exchange.'' The Board originally subjected all securities registered on a national securities exchange to the same margin requirement. It later established different margin requirements for convertible and nonconvertible debt securities, but at no time denied loan value (i.e., required 100 percent margin) to exchange-listed securities (with the exception of options).

In 1968, Congress amended section 7 of the '34 Act to delete the reference to exchange listed securities so that the Board is now instructed to prescribe rules with respect to the amount of credit that may be extended on ''any security (other than an exempted security).'' The Board chose to implement this authority to establish margin requirements for securities not traded on a national securities exchange by subjecting every over-the-counter stock to a set of Board-established criteria and publishing a list of those OTC securities which meet these criteria. However, in 1983 the Board deferred to the listing requirements of Nasdaq's National Market tier as an additional method of qualifying as a *margin security*. Thereafter, domestic stocks that were not listed on a national securities exchange qualified for margin treatment either by being listed on Nasdaq's National Market tier or by appearing on the Board's List of Marginable OTC Stocks after meeting the Board's criteria formerly found in § 220.17 of Regulation T.

[40] Lenders other than broker-dealers and banks are responsible for applying Federal Reserve margin requirements only after they have extended margin stock secured credit in an amount that surpasses one of two dollar thresholds: $200,000 in credit extended in one calendar quarter or $500,000 in credit outstanding at any time.

[41] 17 CFR 240.15c3–1, ''Net capital requirements for brokers or dealers.''

[42] The SmallCap tier of the Nasdaq Stock Market contains over 1800 stocks, of which approximately 442 are currently marginable at broker-dealers.

[43] Although the term ''national securities exchange'' is not defined in the Board's margin regulations or section 3(a) of the '34 Act (whence terms are incorporated by reference into the Board's margin regulations), the Board has always understood the term to mean a securities exchange registered with the SEC under section 6 of the '34 Act (''National securities exchanges,'' 15 U.S.C. 78f). In a separate document published elsewhere in today's **Federal Register**, the Board is requesting comment on whether it should propose to incorporate this definition into its margin regulations.

[44] The Board definition of *OTC margin stock* in the second (definitional) section of Regulations G, T and U referred to stock ''that the Board has determined has the degree of national investor interest, the depth and breadth of market, the availability of information respecting the security and its issuer, and the character and permanence of the issuer to warrant being treated like an equity security traded on a national securities exchange.''

[45] SEC approval was received on August 22, 1997.

[46] The definition of *margin security* formerly included ''any OTC security designated as qualified for trading in the national market system under a designation plan approved by the Securities and Exchange Commission (NMS security)'' as well as ''any OTC margin stock.'' The former referred to Nasdaq listed stocks trading in the National Market tier, while the latter referred to those Nasdaq listed stocks trading in the SmallCap tier that the Board identified on a quarterly basis as meeting the requirements found in § 207.6 of Regulation G, § 220.17 of Regulation T, and § 221.7 of Regulation U. These two paragraphs have been replaced with a reference to ''any security listed on the Nasdaq Stock Market.''

[47] For a discussion of the effect of the elimination of the OTC List for lenders other than broker-dealers, see section III. A. 1. In the Supplementary Information.

[48] 17 CFR 240.15c3–1.

[49] *See*, 58 *FR* 44310; August 20, 1993.

out its original criteria and Foreign List and rely exclusively on the SEC's ''ready market'' test.

Most commenters opposed the idea of phasing out the Board's original eligibility requirements for foreign margin stocks in favor of reliance on the FT/S&P Indices or the SEC's ''ready market'' concept because they did not want to eliminate the marginability of stocks that appear on the Board's Foreign List but that may not meet the other tests. The Board therefore is retaining its Foreign List to identify those foreign stocks that have been found to meet the Board's original eligibility and continued listing requirements and amending the definition of *foreign margin stock* in § 220.2 of Regulation T to include both securities on the Board's Foreign List and those deemed to have a ''ready market'' for capital purposes, as determined by the SEC. This will allow a stock appearing on the FT/S&P Indices to qualify as a *margin security* without the need to be included on the Board's Foreign List, a request made by several commenters. Several other commenters also requested the ability to have broker-dealers make their own determination that a specific foreign stock has a ''ready market'' and should therefore be a margin security. The Board views the process of increasing the coverage of its definition of *margin security* as an incremental one and believes it is appropriate at this time to limit the margin status of foreign stocks to those that either meet the Board's original criteria for foreign margin stock and therefore appear on the Board's Foreign List or are deemed by the SEC to have a ''ready market'' for purposes of their net capital rule.[50]

3. Options: Short Sales and Arbitrage Transactions

When options first began trading on a national securities exchange in 1973, the Board issued an interpretation concluding that options may not be considered securities ''exchangeable or convertible into other securities, within 90 calendar days, without restriction other than the payment of money.''[51] The quoted language appears in the bona fide arbitrage provision of the good faith account (§ 220.6(b) of Regulation T, formerly the arbitrage account in § 220.7) and in the Supplement (§ 220.12 of Regulation T, formerly § 220.18) under the margin required for short sales. The effect of the interpretation was to preclude the possibility of effecting ''bona fide arbitrage'' (which requires no margin under Regulation T) between options and their underlying securities and to preclude the use of an option in lieu of the 50 percent margin required for short sales in addition to the short sale proceeds. Last year, the Board proposed to rescind the 1973 interpretation. A majority of commenters supported this proposal, although the Treasury Department commented that this may have merit for certain options but is premature until an approach is more fully developed.

The Board is rescinding its interpretation that options are not convertible securities and amending the Supplement of Regulation T to allow a listed call option to serve as partial margin for short sales of the underlying security. To ensure that a call option adequately covers a customer's obligation in a short sale, the Supplement of Regulation T requires that a call option serving in lieu of part of the required margin is an American style option[52] issued by a registered clearing corporation and traded on a national securities exchange with an exercise (strike) price that is not greater than the price at which the underlying security was sold short. This will ensure that the short sale proceeds and option can be used to cover the short position in the underlying security if necessary. In addition, rescission of the Board interpretation will allow ''bona fide'' arbitrage between options and their underlying securities to be effected without further regulatory changes in the good faith account on the same basis as other convertible securities such as convertible bonds.

In response to the Board's request for comment on using long calls to offset some of the required margin for a short sale, several commenters also suggested that the Board should not require margin for the long purchase of a security if the customer has a long put on that security. The Board believes the use of a put option in lieu of margin for the purchase of a security may be appropriate in the context of a future portfolio margining system, which is permitted as an alternative to Regulation T.[53]

When the Board adopted amendments to Regulation T in 1996, it made several provisions of the regulation concerning options effective only until June 1, 1997.[54] These provisions have been replaced with SRO rules and the Board is deleting the provisions from the revised Regulation T.

*C. Miscellaneous Issues*

1. Foreign Issues

*a. Credit by foreign branches of U.S. broker-dealers:* The Board proposed to amend Regulation T to exempt credit extended by foreign branches of U.S. broker-dealers if the credit is extended to foreign persons against foreign securities. This proposal was supported by all responsive commenters, although one commenter expressed concern about foreign securities whose principal trading market is in the United States and another commenter suggested exempting all credit extended by U.S. broker-dealers outside the United States. The Board is adopting its proposal and amending the scope section of Regulation T to exclude financial relations between a foreign branch of a U.S. broker-dealer and a foreign person involving foreign securities.[55] This will remove restrictions from foreign branches of U.S. broker-dealers that are not imposed on foreign branches of U.S. banks or foreign affiliates of U.S. lenders.

*b. Foreign currency:* The Board is moving former § 220.4(b)(8) of Regulation T, which permits a creditor to extend credit in a margin account denominated in any freely convertible foreign currency, to the general provisions section of the regulation (specifically, § 220.3(i)). This will make clear that creditors may also extend credit denominated in any freely convertible currency in the good faith account and the broker-dealer credit account.

2. Technical Amendments

There were no negative comments on the first two technical amendments described below, which were proposed by the Board in April 1996. The third amendment is also technical in nature and was suggested by a commenter.

*a. Definition of covered option transaction:* The Board proposed to amend the definition of *covered option transaction in* § 220.2 of Regulation T to shorten the list of permissible options transactions in the cash account by referring to SRO rules generically. These rules were most recently amended in June of this year and the Board's action should result in a shorter and simpler

[50] In this regard, the Board is confirming that broker-dealers may rely on written ''no action'' or interpretative letters issued by the SEC or its staff regarding its ''ready market'' criteria.

[51] 12 CFR 220.126 and 12 CFR 221.123, reprinted in the *Federal Reserve Regulatory Service* at 5–488.

[52] American style options are exercisable on any business day until expiration. European style options may be exercised only at expiration.

[53] *See* Section 220.1(b)(3)(i) of the revised Regulation T.

[54] *See* e.g., §§ 220.4(b)(9) and 220.12(b)(6) of the former Regulation T.

[55] *See* Section 220.1(b)(3)(iv) of the revised Regulation T.

Regulation T without having a substantive effect for broker-dealers. The Board is adopting the amendment as proposed.

*b. Definition of margin equity security:* The Board proposed to add a definition of the term *margin equity security*, which appears in the Supplement to Regulation T. No adverse comments were received. The definition, which is being adopted as proposed, states that a *margin equity security* means a *margin security* (as defined in Regulation T) that is an *equity security* (as defined in section 3(a) of the '34 Act, whence definitions are incorporated into the Board's margin regulations if not otherwise defined by the Board).

*c. Definition of current market value:* Regulations G and U each contained a definition of the phrase ''current market value'' used to determine the loan value of margin securities. Regulation T did not contain a definition of *current market value* but addressed the same issue in former § 220.3(g), ''Valuing securities.'' One commenter noted that while Regulation T contains several references to a security's ''current market value,'' it does not contain a definition of this term as do Regulations G and U. The Board is adding a definition of *current market value* to § 220.2 of Regulation T that is the equivalent of former § 220.3(g) and is deleting former § 220.3(g) from Regulation T. This action will have no substantive effect, but will make the structure of the Board's margin regulations more consistent.

3. Cash Account: 90-Day Freeze

Customers who do not have sufficient funds in their cash account to pay for a security on trade date must agree to pay for the security before selling it. According to § 220.8(c)(1) of Regulation T, if a nonexempted security ''is sold or delivered to another broker or dealer without having been previously paid for in full by the customer, the privilege of delaying payment beyond the trade date shall be withdrawn for 90 calendar days.'' This is known as a ''90-day freeze.'' However, § 220.8(c)(2) says the freeze ''shall not apply'' if full payment is received within the required payment period and the proceeds from the sale are not withdrawn before payment is received. In response to requests for clarification from commenters, the Board is of the view that when a customer sells or delivers out securities that have not been paid for, the 90-day freeze contained in § 220.8(c) of Regulation T need not be applied until the permissible payment period has passed.

4. Board Interpretations

The Board is reviewing its interpretations of Regulation T as part of its periodic review. In 1996, the Board deleted eleven interpretations that had either been incorporated directly into the regulation or had become moot due to subsequent amendments. As discussed above in section II.B.3, the Board is deleting an additional interpretation today that prevented the use of options as margin for short sales of the underlying security and prevented the use of the bona fide arbitrage provision for transactions involving options and their underlying securities.

In an advance notice of proposed rulemaking published elsewhere in today's **Federal Register**, the Board is also specifically soliciting comment on whether it should propose amendments to incorporate and broaden two additional interpretations: a 1962 interpretation [56] regarding the retirement of stock by an issuer and a 1990 interpretation [57] regarding the application of the arranging provision [58] to broker-dealer activities under SEC Rule 144A.

## III. Regulations G and U

### *A. Loan Value*

1. Over-the-Counter Stocks

Prior to the adoption of today's amendments, all of the Board's securities credit regulations permitted 50 percent loan value for: (1) Stocks traded on a national securities exchange, (2) stocks in the National Market tier of the Nasdaq Stock Market (''NMS'' securities), and (3) stocks in the Small Capitalization (''SmallCap'' securities) tier of the Nasdaq Stock Market that are identified by the Board as ''OTC margin stocks.''

In its request for comment issued last year, the Board noted that although the definition and treatment of domestic margin stocks is currently the same in Regulations G, T and U, nonmargin stocks are treated differently at broker-dealers (where they have no loan value) than at banks and other lenders (where the Board's margin rules do not limit their value). In light of the disparate treatment of nonmargin stock at broker-dealers versus other lenders, the Board sought comment on the appropriate definition of *margin stock* under Regulations G and U and on possible solutions to the current structure of its margin regulations. This structure results in an increase in burden for lenders other than broker-dealers whenever burden is reduced for broker-dealers if the definition of *margin stock* in Regulations G and U is expanded whenever the definition of *margin security* is expanded in Regulation T. The Board suggested its regulations might be amended to cover more securities for broker-dealers and fewer securities for banks and other lenders.

Although three commenters argued for uniform coverage of equity securities under the Board's margin regulations, most commenters opposed increasing the coverage of Regulations G and U if Regulation T is amended to permit broker-dealers to extend credit against more securities. Because banks and other lenders already have experience in valuing smaller issues, the Board believes that definition of *margin stock* in Regulation U (which incorporates Regulation G) can be amended to exclude stocks trading in the SmallCap tier of the Nasdaq Stock Market.[59] The Board's quarterly OTC List will no longer be required for banks and other nonbroker lenders because the Board will no longer choose which Nasdaq stocks qualify as a *margin stock* for purposes of Regulation U. These lenders can determine whether an OTC stock is in Nasdaq's National Market tier by consulting a newspaper, contacting the NASD or SEC, or checking the NASD's web site at *http://www.nasdaq.com*. The Board is therefore deleting the requirements for inclusion on the OTC List formerly found in § 221.7 of Regulation U, the definition of *OTC margin stock* in § 221.2 of Regulation U, and the provision concerning ''lack of notice of NMS security designation'' formerly found in § 221.3(j) of Regulation U.

2. Options

Options, whether traded on an exchange (also known as listed options) or over-the-counter (also known as unlisted options), have traditionally had no loan value under the Board's margin

[56] 12 CFR 220.119, reprinted in the *FRRS* at 5–490.

[57] 12 CFR 220.131, reprinted in the *FRRS* at 5–470.1.

[58] As proposed in 1996, the Board is moving the arranging provision from former § 220.13 of Regulation T to the general provisions found in § 220.3.

[59] Approximately 442 SmallCap issues qualify as ''OTC margin stock'' under the Board's criteria formerly found in § 221.7 of Regulation U. If today's amendments were adopted with an immediate effective date, these stocks would no longer be subject to a 50 percent loan value limitation when used as collateral for purpose loans. The number of stocks that will actually be affected when the new regulation goes into effect is likely to be somewhat smaller once the new Nasdaq listing requirements are fully phased in.

regulations.[60] In 1995, the Board proposed giving listed options 50 percent loan value at broker-dealers (under Regulation T) and banks (under Regulation U).[61] Based on comments received in connection with the proposed amendments to Regulation T, the Board decided in 1996 to incorporate rules of the options exchanges (also known as self-regulatory organizations or SROs) regarding options loan value into Regulation T instead of the 50 percent requirement it had proposed. At the same time, the Board proposed to amend Regulations G and U to allow these lenders to extend credit against listed options to the extent permitted by the rules of the options exchanges. The Board sought comment on the practicality of requiring banks and others to comply with rules of SROs of which they are not members.[62] Five commenters supported uniform margin requirements for all lenders, while four other commenters opposed making lenders who are not broker-dealers, and therefore not members of a securities SRO, comply with SRO rules. The SRO margin rules for options are complex and the Board does not believe it is practical to require banks to comply with the rules of national securities exchanges of which they are not members, nor to expect bank examiners to be familiar with these rules in verifying compliance with Regulation U. The Board is therefore adopting the original 1995 Regulation U proposal and amending the Supplement to Regulation U to allow lenders other than broker-dealers to extend 50 percent loan value against listed options. Unlisted options continue to have no loan value when used as part of a mixed-collateral loan. However, banks and other lenders can extend credit against unlisted options if the loan is not subject to Regulation U. The Board is requesting comment on the future status of unlisted options under Regulation U in an advance notice of proposed rulemaking published elsewhere in today's **Federal Register**.

3. Money Market Mutual Funds

Although Regulation U treats most mutual funds as margin stock subject to 50 percent loan value, it has always allowed good faith loan value for mutual funds whose portfolios consist of exempted securities.[63] In 1995, the Board proposed to extend this treatment to all money market mutual funds under both Regulations T and U. All responsive commenters supported this proposal, which was adopted for Regulation T purposes in 1996. The Board is therefore amending the definition of *margin stock* in Regulation U to exclude money market mutual funds. This will have the effect of permitting good faith loan value for these securities when they are used as collateral for a purpose loan that is secured in part by margin stock.[64]

*B. Financing of Securities Purchased on a DVP Basis*

Banks may act as custodians for their customers' securities. These securities are often purchased at registered broker-dealers and delivered to the bank on a delivery-versus-payment (DVP) basis. In the late 1980s and early 1990s, Federal Reserve System examiners and staff of the SEC alleged that certain banks were accepting the delivery of customer margin securities without having the customer's full payment on hand, thereby extending purpose credit in excess of the Regulation U margin requirements. In many cases, payment for the customer's purchase was made in reliance on the proceeds of the sale of the same security.[65]

The purchase and same-day sale of a security without independent funds to pay for the purchase is prohibited at a broker-dealer if effected in a cash account (where it is known as ''free-riding''), because the customer is obtaining intraday credit from the broker-dealer to pay for the security so it can own the security in order to sell it. This practice, however, is not prohibited at a broker-dealer if effected in a margin account, because the broker-dealer has entered into a credit relationship with the customer before extending credit to cover the purchase. In order to allow banks to extend credit in a manner similar to broker-dealers using a margin account, the Board proposed to amend the existing provision in § 221.3(c) of Regulation U for revolving credit agreements to include such credit. The Board stated its belief that applying the revolving credit provision would ensure that banks financing customer securities transactions establish credit limits for their customers, including limits on intraday trading.

Ten commenters, including five Reserve Banks, supported the Board's proposal. Two bank trade associations opposed the proposal. The trade associations made similar arguments. Each acknowledged that in providing custodial services banks sometimes extend credit to pay for customer securities and this credit may be intraday or extend for a longer period of time. The trade associations stated that this credit is extended by a bank in its own discretion and not pursuant to an agreement with their customer. The trade associations stated banks do not have written agreements with their customers because they do not want to be required to extend this type of credit. The trade associations stated that custodial banks generally have a lien only on the assets in a customer's account, and they believed it would be inconsistent for a bank to demand that a customer post additional assets to cover overdraft extensions of credit. The trade associations were also concerned that the Board's proposal might be seen as superseding staff opinions in this area permitting some overdrafts when banks carefully monitor their customer's transactions.

As an alternative to the Board's proposal to cover extensions of credit used to finance a customer's purchase of securities on a DVP basis under the provision for revolving lines of credit, the trade associations suggested exempting these transactions by amending § 221.6(f) of Regulation U. Section 221.6(f) provides that a bank may extend and maintain purpose credit without regard to the requirements of Regulation U if the credit is to ''temporarily finance the purchase or sale of securities for prompt delivery, if the credit is to be repaid in the ordinary course of business upon completion of the transaction.'' The Board proposed to amend this section to restore language inadvertently deleted in 1983 that

[60] Listed options were the only securities denied loan value by the Board under all of its securities credit regulations, in spite of the fact that they qualify as margin stock because they are listed on a national securities exchange. Although unlisted options do not qualify as margin stock and most nonmargin stock has good faith loan value under Regulation U, unlisted options have no loan value if the loan is a purpose credit secured at least in part by margin stock. Of course, Regulations G and U by their terms would not cover a loan that was solely secured by an unlisted option.

[61] The Regulation T proposal for broker-dealers was part of Docket No. R–0772 and appeared at 60 FR 33763 (June 29, 1995). The Regulation U proposal for banks was part of Docket No. R–0905 and appeared at 60 FR 63660 (December 12, 1995).

[62] The final action on Regulation T and revised proposal for Regulations G and U appeared at 61 FR 20385 (May 6, 1996).

[63] Section 221.2 of Regulation U excludes from the definition of ''margin stock'' any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 ''which has at least 95 percent of its assets continuously invested in exempted securities.''

[64] Regulation T was amended last year to provide similar treatment for money market mutual funds. The Board is using the same definition used at that time, i.e., a security issued by a registered investment company that is considered a money market fund under SEC Rule 2a–7 (17 CFR 270.2a–7, ''Money market funds'').

[65] In response to banks who argued that they were relying on the sale proceeds of the unpaid-for security, Board staff opined that reliance on sale proceeds is tantamount to reliance on the security itself.

makes clear the exception cannot be used to finance the purchase of securities at a broker-dealer (see, e.g. staff opinions at *FRRS* 5–884.68 and 5–942.2). The trade associations suggested that if the Board's primary concern in this area is preventing banks from aiding and abetting free-riding violations by their customers, § 221.6(f) of Regulation U should be amended not by restating that it cannot be used to finance transactions effected at a broker-dealer, but by stating that the exception is not available if the bank ''knowingly'' relies on the proceeds of a security's sale as a source of payment for the security.

The Board is amending the revolving credit agreement provision in § 221.3(c)(2)(iii)(B) of Regulation U as proposed to require a lender to call for additional collateral when the lender is relying on margin stock which is insufficient to cover an extension of purpose credit. This will clarify that a lender who has an agreement with its customer covering credit extended in connection with custodial or clearing services is properly secured or truly unsecured and should therefore be free from allegations of aiding and abetting customer free-riding violations. The Board is also readopting the language inadvertently dropped from § 221.6(f) of Regulation U, as proposed. The exemption in § 221.6(f) of Regulation U has never been available to cover the same-day purchase and sale of a security bought in a cash account at a broker-dealer, and the restoration of the former language will eliminate any ambiguity. Finally, the Board notes that its action is not intended to supersede the staff opinions in this area.

In the advance notice of proposed rulemaking published elsewhere in today's **Federal Register**, the Board is soliciting comment on proposals to address the supervisory and credit implications of free-riding.

*C. Mixed Collateral Loans*

Regulation U does not apply to extensions of securities credit that are not secured at least in part by margin stock. Purpose loans secured in part by margin stock and in part by other collateral are known as ''mixed-collateral'' loans and Regulation U has always required some kind of separation for these types of loans.[66] Section 221.3(e) of Regulation U provided that mixed collateral loans ''shall be treated as two separate loans.'' This was intended to prevent a bank from inflating the value of nonmargin stock collateral to make up for the 50 percent limitation for purpose loans secured by margin stock.

The provision for mixed collateral loans did not present a problem when applied at the time the loan commitment is made, as it merely required a bank to determine the loan value of margin stock collateral and then verify that the other collateral has a good faith loan value sufficient to make up the difference between the loan value of the margin stock and the amount of credit being extended and allocate the credit secured by each tranche.

The Board has received a number of inquiries about the interplay of the provision for mixed-collateral loans and § 221.3(f) of Regulation U, which covers withdrawals and substitution of collateral. For example, if the value of a customer's nonmargin stock collateral has increased since a mixed collateral loan was made, but the value of the margin stock has stayed the same, the customer cannot withdraw margin stock even though the overall value of the collateral has increased, because the ''separate'' loan secured by margin stock does not have excess value that would permit its withdrawal. In other words, changes in collateral value in one tranche have no effect on the other.

Noting that the separation requirement for mixed collateral loans makes collateral management extremely difficult, the Board proposed to modify the provision on mixed-collateral loans so that instead of separating margin stock from all other collateral, a bank would separate margin stock and other financial instruments such as nonmargin stock, bonds, and cash equivalents. This collateral would secure one loan and nonfinancial instruments (such as real estate), if any, would be treated as securing a ''separate'' loan. The Board noted that financial instruments generally have readily available prices and are therefore less susceptible to being assigned an inflated value to offset the 50 percent loan value limitation for margin stock. The Board also invited comment on the continuing need for separation of financial and nonfinancial collateral.

Ten commenters supported the Board's proposal and no commenter expressed a preference for maintaining the status quo. One commenter suggested providing additional flexibility by amending the regulation to provide that margin stock and other financial instruments *may* be treated as a single loan. Three commenters supported complete elimination of any separation requirements.

The Board is deleting the mixed collateral loan provision in former § 221.3(e) of Regulation U. Banks will still be required to make a good faith determination that nonmargin stock collateral, if any, has sufficient good faith loan value to make up the difference between the regulatory loan value of margin stock and the amount of credit extended for a purpose loan. Although nonfinancial instruments are often more difficult to value than securities, the Board believes the requirement of good faith on the part of the lender is sufficient to guard against circumvention of the Board's margin requirements for equity securities. With the elimination of the requirement to separate purpose loans secured by margin stock from other purpose loans will allow a bank to release any type of collateral if the overall loan value of the pool of collateral is greater than the amount required under Regulation U.

**IV. Regulation X**

Regulation X (''Borrowers of securities credit'') applies the Board's margin regulations to United States persons and related parties who obtain credit outside the United States to purchase or carry United States securities. Borrowers must conform the credit they receive with one of the Board's other margin regulations, according to the lender involved. The regulation also applies to borrowers who obtain credit within the United States to purchase or carry any security if the borrower willfully causes the credit to be extended in contravention of the Board's other margin regulations. Both of these provisions refer to Regulation G. The Board is amending Regulation X to remove the references to Regulation G. Borrowers obtaining credit outside the United States who were formerly required to conform their credit to Regulation G will now be required to conform their credit to Regulation U as it applies to nonbank lenders.

**V. Regulatory Flexibility Act**

The amendments being adopted are intended to accomplish two goals. As discussed in the preamble, some of the amendments have been developed to implement the National Securities Markets Improvement Act (Pub. L. 104–290), which reduced the scope of the Board's statutory authority for margin regulation. The others are intended to simplify regulatory requirements and eliminate restrictions currently imposed on broker-dealers, other lenders of securities credit, and their customers. For example, smaller companies whose stock is listed on Nasdaq's Small Capitalization market will no longer be

[66] The mixed-collateral loan provision does not apply to nonpurpose loans.

subject to Regulation G registration and reporting requirements if they extend credit to employees secured by company stock. The Board believes the amendments will not have a substantial adverse effect on a significant number of small lenders.

**VI. Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OMB control numbers are listed below.

The collections of information that may be affected by this rulemaking are found in 12 CFR 207 and 12 CFR 221. These information collections are mandatory (15 U.S.C. 78g and 78w). The respondents and recordkeepers are for-profit financial institutions, including banks and nonbank lenders. The Federal Reserve collects the information in order to identify lenders subject to Regulation G, to verify compliance with Regulation G, and to monitor the size of the market for margin credit. The purpose statements collect information on the amount and purpose of the loans secured by margin stock. The burden associated with the FR U–1 and the FR G–3 is recordkeeping burden. Because the records would be maintained by respondents and are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises. The FR G–2 does not contain confidential information. The information in the FR G–1 and the FR G–4 are given confidential treatment under the Freedom of Information Act (5 U.S.C. § 552 (b)(4)).

In a separate document published elsewhere in today's **Federal Register**, the Board is soliciting comment on the disposition of certain reporting forms currently used by Regulation G lenders, the FR G–1, FR G–2, and FR G–4, and on further amendments to Regulation U that would affect the margin credit ''purpose statements,'' the FR G–3 and the FR U–1. Accordingly, until the Board has collected and analyzed such comments as may be forthcoming, it will extend for three years, without revision, under delegated authority by the Office of Management and Budget, the following collections of information: FR G–1 (OMB No. 7100–0011), FR G–2 (OMB No. 7100–0011), FR G–3 (OMB No. 7100–0018), FR G–4 (OMB No. 7100–0011), and FR U–1 (OMB No. 7100–0115). The Board anticipates that these information collections will be revised before the full three-year period has ended.

In proposed amendments issued for comment by the Board in December 1995 (Docket R–0905), April 1996 (Docket R–0923), and November 1996 (Docket R-0944), no comments specifically addressing the burden estimates for these information collections were received.

The estimated annual burden for these information collections is summarized in the table below.

| | Estimated number of respondents | Annual frequency | Estimated average hours per response | Estimated annual burden hours |
|---|---|---|---|---|
| FR G–1 | 81 | 1 | 2.50 | 203 |
| FR G–2 | 68 | 1 | 0.25 | 17 |
| FR G–3 | 700 | 20 | 0.16 | 2,240 |
| FR G–4 | 629 | 1 | 2.00 | 1,258 |
| FR U–1 | 10,637 | 212 | 0.07 | 157,853 |
| Total | | | | 161,571 |

The Federal Reserve has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Projects (7100–0011, 7100–0018, and 7100–0115), Washington, DC 20503.

**List of Subjects**

*12 CFR Part 207*

Banks, banking, Credit, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

*12 CFR Part 220*

Banks, banking, Brokers, Credit, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

*12 CFR Part 221*

Banks, banking, Brokers, Credit, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

*12 CFR Part 224*

Banks, banking, Brokers, Credit, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

*12 CFR Part 265*

Authority delegations (Government agencies), Banks, banking, Federal Reserve System.

For the reasons set out in the preamble, and under the authority of 12 U.S.C. 78c, 78g, 78q, and 78w, 12 CFR chapter II is amended as follows:

## PART 207—[REMOVED]

1. Part 207 is removed.

## PART 220—CREDIT BY BROKERS AND DEALERS (REGULATION T)

2. The authority citation for part 220 continues to read as follows:

**Authority:** 15 U.S.C. 78c, 78g, 78q, and 78w.

3. Sections 220.1 through 220.12 are revised to read as follows:

### § 220.1 Authority, purpose, and scope.

(a) *Authority and purpose.* Regulation T (this part) is issued by the Board of Governors of the Federal Reserve System (the Board) pursuant to the Securities Exchange Act of 1934 (the Act) (15 U.S.C.78a *et seq.*). Its principal purpose is to regulate extensions of credit by brokers and dealers; it also covers related transactions within the Board's authority under the Act. It imposes, among other obligations, initial margin requirements and payment rules on certain securities transactions.

(b) *Scope.* (1) This part provides a margin account and four special purpose accounts in which to record all financial relations between a customer and a creditor. Any transaction not specifically permitted in a special

purpose account shall be recorded in a margin account.

(2) This part does not preclude any exchange, national securities association, or creditor from imposing additional requirements or taking action for its own protection.

(3) This part does not apply to:

(i) Financial relations between a customer and a creditor to the extent that they comply with a portfolio margining system under rules approved or amended by the SEC;

(ii) Credit extended by a creditor based on a good faith determination that the borrower is an exempted borrower;

(iii) Financial relations between a customer and a broker or dealer registered only under section 15C of the Act; and

(iv) Financial relations between a foreign branch of a creditor and a foreign person involving foreign securities.

**§ 220.2 Definitions.**

The terms used in this part have the meanings given them in section 3(a) of the Act or as defined in this section as follows:

*Affiliated corporation* means a corporation of which all the common stock is owned directly or indirectly by the firm or general partners and employees of the firm, or by the corporation or holders of the controlling stock and employees of the corporation, and the affiliation has been approved by the creditor's examining authority.

*Cash equivalent* means securities issued or guaranteed by the United States or its agencies, negotiable bank certificates of deposit, bankers acceptances issued by banking institutions in the United States and payable in the United States, or money market mutual funds.

*Covered option transaction* means any transaction involving options or warrants in which the customer's risk is limited and all elements of the transaction are subject to contemporaneous exercise if:

(1) The amount at risk is held in the account in cash, cash equivalents, or via an escrow receipt; and

(2) The transaction is eligible for the cash account by the rules of the registered national securities exchange authorized to trade the option or warrant or by the rules of the creditor's examining authority in the case of an unregistered option, provided that all such rules have been approved or amended by the SEC.

*Credit balance* means the cash amount due the customer in a margin account after debiting amounts transferred to the special memorandum account.

*Creditor* means any broker or dealer (as defined in sections 3(a)(4) and 3(a)(5) of the Act), any member of a national securities exchange, or any person associated with a broker or dealer (as defined in section 3(a)(18) of the Act), except for business entities controlling or under common control with the creditor.

*Current market value* of:

(1) A security means:

(i) Throughout the day of the purchase or sale of a security, the security's total cost of purchase or the net proceeds of its sale including any commissions charged; or

(ii) At any other time, the closing sale price of the security on the preceding business day, as shown by any regularly published reporting or quotation service. If there is no closing sale price, the creditor may use any reasonable estimate of the market value of the security as of the close of business on the preceding business day.

(2) Any other collateral means a value determined by any reasonable method.

*Customer* excludes an exempted borrower and includes:

(1) Any person or persons acting jointly:

(i) To or for whom a creditor extends, arranges, or maintains any credit; or

(ii) Who would be considered a customer of the creditor according to the ordinary usage of the trade;

(2) Any partner in a firm who would be considered a customer of the firm absent the partnership relationship; and

(3) Any joint venture in which a creditor participates and which would be considered a customer of the creditor if the creditor were not a participant.

*Debit balance* means the cash amount owed to the creditor in a margin account after debiting amounts transferred to the special memorandum account.

*Delivery against payment, Payment against delivery, or a C.O.D. transaction* refers to an arrangement under which a creditor and a customer agree that the creditor will deliver to, or accept from, the customer, or the customer's agent, a security against full payment of the purchase price.

*Equity* means the total current market value of security positions held in the margin account plus any credit balance less the debit balance in the margin account.

*Escrow agreement* means any agreement issued in connection with a call or put option under which a bank or any person designated as a control location under paragraph (c) of SEC Rule 15c3–3 (17 CFR 240.15c3–3(c)), holding the underlying asset or required cash or cash equivalents, is obligated to deliver to the creditor (in the case of a call option) or accept from the creditor (in the case of a put option) the underlying asset or required cash or cash equivalent against payment of the exercise price upon exercise of the call or put.

*Examining authority* means:

(1) The national securities exchange or national securities association of which a creditor is a member; or

(2) If a member of more than one self-regulatory organization, the organization designated by the SEC as the examining authority for the creditor.

*Exempted borrower* means a member of a national securities exchange or a registered broker or dealer, a substantial portion of whose business consists of transactions with persons other than brokers or dealers, and includes a borrower who:

(1) Maintains at least 1000 active accounts on an annual basis for persons other than brokers, dealers, and persons associated with a broker or dealer;

(2) Earns at least $10 million in gross revenues on an annual basis from transactions with persons other than brokers, dealers, and persons associated with a broker or dealer; or

(3) Earns at least 10 percent of its gross revenues on an annual basis from transactions with persons other than brokers, dealers, and persons associated with a broker or dealer.

*Exempted securities mutual fund* means any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), provided the company has at least 95 percent of its assets continuously invested in exempted securities (as defined in section 3(a)(12) of the Act).

*Foreign margin stock* means a foreign security that is an equity security that:

(1) Appears on the Board's periodically published List of Foreign Margin Stocks; or

(2) Is deemed to have a ''ready market'' under SEC Rule 15c3–1 (17 CFR 240.15c3–1) or a ''no-action'' position issued thereunder.

*Foreign person* means a person other than a United States person as defined in section 7(f) of the Act.

*Foreign security* means a security issued in a jurisdiction other than the United States.

*Good faith* with respect to:

(1) Margin means the amount of margin which a creditor would require in exercising sound credit judgment;

(2) Making a determination or accepting a statement concerning a borrower means that the creditor is alert to the circumstances surrounding the credit, and if in possession of information that would cause a prudent

person not to make the determination or accept the notice or certification without inquiry, investigates and is satisfied that it is correct.

*Margin call* means a demand by a creditor to a customer for a deposit of additional cash or securities to eliminate or reduce a margin deficiency as required under this part.

*Margin deficiency* means the amount by which the required margin exceeds the equity in the margin account.

*Margin equity security* means a margin security that is an equity security (as defined in section 3(a)(11) of the Act).

*Margin excess* means the amount by which the equity in the margin account exceeds the required margin. When the margin excess is represented by securities, the current value of the securities is subject to the percentages set forth in § 220.12 (the Supplement).

*Margin security* means:

(1) Any security registered or having unlisted trading privileges on a national securities exchange;

(2) After January 1, 1999, any security listed on the Nasdaq Stock Market;

(3) Any non-equity security;

(4) Any security issued by either an open-end investment company or unit investment trust which is registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8);

(5) Any foreign margin stock;

(6 ) Any debt security convertible into a margin security;

(7) Until January 1, 1999, any OTC margin stock; or

(8) Until January 1, 1999, any OTC security designated as qualified for trading in the national market system under a designation plan approved by the Securities and Exchange Commission (NMS security).

*Money market mutual fund* means any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8) that is considered a money market fund under SEC Rule 2a–7 (17 CFR 270.2a–7).

*Non-equity security* means a security that is not an equity security (as defined in section 3(a)(11) of the Act).

*Nonexempted security* means any security other than an exempted security (as defined in section 3(a)(12) of the Act).

*OTC margin stock* means any equity security traded over the counter that the Board has determined has the degree of national investor interest, the depth and breadth of market, the availability of information respecting the security and its issuer, and the character and permanence of the issuer to warrant being treated like an equity security treaded on a national securities exchange. An OTC stock is not considered to be an OTC margin stock unless it appears on the Board's periodically published list of OTC margin stocks.

*Payment period* means the number of business days in the standard securities settlement cycle in the United States, as defined in paragraph (a) of SEC Rule 15c6–1 (17 CFR 240.15c6–1(a)), plus two business days.

*Purpose credit* means credit for the purpose of:

(1) Buying, carrying, or trading in securities; or

(2) Buying or carrying any part of an investment contract security which shall be deemed credit for the purpose of buying or carrying the entire security.

*Short call or short put* means a call option or a put option that is issued, endorsed, or guaranteed in or for an account.

(1) A short call that is not cash-settled obligates the customer to sell the underlying asset at the exercise price upon receipt of a valid exercise notice or as otherwise required by the option contract.

(2) A short put that is not cash-settled obligates the customer to purchase the underlying asset at the exercise price upon receipt of a valid exercise notice or as otherwise required by the option contract.

(3) A short call or a short put that is cash-settled obligates the customer to pay the holder of an in the money long put or long call who has, or has been deemed to have, exercised the option the cash difference between the exercise price and the current assigned value of the option as established by the option contract.

*Underlying asset* means:

(1) The security or other asset that will be delivered upon exercise of an option; or

(2) In the case of a cash-settled option, the securities or other assets which comprise the index or other measure from which the option's value is derived.

**§ 220.3 General provisions.**

(a) *Records.* The creditor shall maintain a record for each account showing the full details of all transactions.

(b) *Separation of accounts*—(1) *In general.* The requirements of one account may not be met by considering items in any other account. If withdrawals of cash or securities are permitted under this part, written entries shall be made when cash or securities are used for purposes of meeting requirements in another account.

(2) *Exceptions.* Notwithstanding paragraph (b)(1) of this section:

(i) For purposes of calculating the required margin for a security in a margin account, assets held in the good faith account pursuant to § 220.6(e)(1)(i) or (ii) may serve in lieu of margin;

(ii) Transfers may be effected between the margin account and the special memorandum account pursuant to §§ 220.4 and 220.5.

(c) *Maintenance of credit.* Except as prohibited by this part, any credit initially extended in compliance with this part may be maintained regardless of:

(1) Reductions in the customer's equity resulting from changes in market prices;

(2) Any security in an account ceasing to be margin or exempted; or

(3) Any change in the margin requirements prescribed under this part.

(d) *Guarantee of accounts.* No guarantee of a customer's account shall be given any effect for purposes of this part.

(e) *Receipt of funds or securities.* (1) A creditor, acting in good faith, may accept as immediate payment:

(i) Cash or any check, draft, or order payable on presentation; or

(ii) Any security with sight draft attached.

(2) A creditor may treat a security, check or draft as received upon written notification from another creditor that the specified security, check, or draft has been sent.

(3) Upon notification that a check, draft, or order has been dishonored or when securities have not been received within a reasonable time, the creditor shall take the action required by this part when payment or securities are not received on time.

(4) To temporarily finance a customer's receipt of securities pursuant to an employee benefit plan registered on SEC Form S–8 or the withholding taxes for an employee stock award plan, a creditor may accept, in lieu of the securities, a properly executed exercise notice, where applicable, and instructions to the issuer to deliver the stock to the creditor. Prior to acceptance, the creditor must verify that the issuer will deliver the securities promptly and the customer must designate the account into which the securities are to be deposited.

(f) *Exchange of securities.* (1) To enable a customer to participate in an offer to exchange securities which is made to all holders of an issue of securities, a creditor may submit for exchange any securities held in a margin account, without regard to the other provisions of this part, provided

the consideration received is deposited into the account.

(2) If a nonmargin, nonexempted security is acquired in exchange for a margin security, its retention, withdrawal, or sale within 60 days following its acquisition shall be treated as if the security is a margin security.

(g) *Arranging for loans by others.* A creditor may arrange for the extension or maintenance of credit to or for any customer by any person, provided the creditor does not willfully arrange credit that violates parts 221 or 224 of this chapter.

(h) *Innocent mistakes.* If any failure to comply with this part results from a mistake made in good faith in executing a transaction or calculating the amount of margin, the creditor shall not be deemed in violation of this part if, promptly after the discovery of the mistake, the creditor takes appropriate corrective action.

(i) *Foreign currency.* (1) Freely convertible foreign currency may be treated at its U.S. dollar equivalent, provided the currency is marked-to-market daily.

(2) A creditor may extend credit denominated in any freely convertible foreign currency.

(j) *Exempted borrowers.* (1) A member of a national securities exchange or a registered broker or dealer that has been in existence for less than one year may meet the definition of exempted borrower based on a six-month period.

(2) Once a member of a national securities exchange or registered broker or dealer ceases to qualify as an exempted borrower, it shall notify its lender of this fact before obtaining additional credit. Any new extensions of credit to such a borrower, including rollovers, renewals, and additional draws on existing lines of credit, are subject to the provisions of this part.

**§ 220.4 Margin account.**

(a) *Margin transactions.* (1) All transactions not specifically authorized for inclusion in another account shall be recorded in the margin account.

(2) A creditor may establish separate margin accounts for the same person to:

(i) Clear transactions for other creditors where the transactions are introduced to the clearing creditor by separate creditors; or

(ii) Clear transactions through other creditors if the transactions are cleared by separate creditors; or

(iii) Provide one or more accounts over which the creditor or a third party investment adviser has investment discretion.

(b) *Required margin*—(1) *Applicability.* The required margin for each long or short position in securities is set forth in § 220.12 (the Supplement) and is subject to the following exceptions and special provisions.

(2) *Short sale against the box.* A short sale ''against the box'' shall be treated as a long sale for the purpose of computing the equity and the required margin.

(3) *When-issued securities.* The required margin on a net long or net short commitment in a when-issued security is the margin that would be required if the security were an issued margin security, plus any unrealized loss on the commitment or less any unrealized gain.

(4) *Stock used as cover.* (i) When a short position held in the account serves in lieu of the required margin for a short put, the amount prescribed by paragraph (b)(1) of this section as the amount to be added to the required margin in respect of short sales shall be increased by any unrealized loss on the position.

(ii) When a security held in the account serves in lieu of the required margin for a short call, the security shall be valued at no greater than the exercise price of the short call.

(5) *Accounts of partners.* If a partner of the creditor has a margin account with the creditor, the creditor shall disregard the partner's financial relations with the firm (as shown in the partner's capital and ordinary drawing accounts) in calculating the margin or equity of the partner's margin account.

(6) *Contribution to joint venture.* If a margin account is the account of a joint venture in which the creditor participates, any interest of the creditor in the joint account in excess of the interest which the creditor would have on the basis of its right to share in the profits shall be treated as an extension of credit to the joint account and shall be margined as such.

(7) *Transfer of accounts.* (i) A margin account that is transferred from one creditor to another may be treated as if it had been maintained by the transferee from the date of its origin, if the transferee accepts, in good faith, a signed statement of the transferor (or, if that is not practicable, of the customer), that any margin call issued under this part has been satisfied.

(ii) A margin account that is transferred from one customer to another as part of a transaction, not undertaken to avoid the requirements of this part, may be treated as if it had been maintained for the transferee from the date of its origin, if the creditor accepts in good faith and keeps with the transferee account a signed statement of the transferor describing the circumstances for the transfer.

(8) *Sound credit judgment.* In exercising sound credit judgment to determine the margin required in good faith pursuant to § 220.12 (the Supplement), the creditor shall make its determination for a specified security position without regard to the customer's other assets or securities positions held in connection with unrelated transactions.

(c) *When additional margin is required*—(1) *Computing deficiency.* All transactions on the same day shall be combined to determine whether additional margin is required by the creditor. For the purpose of computing equity in an account, security positions are established or eliminated and a credit or debit created on the trade date of a security transaction. Additional margin is required on any day when the day's transactions create or increase a margin deficiency in the account and shall be for the amount of the margin deficiency so created or increased.

(2) *Satisfaction of deficiency.* The additional required margin may be satisfied by a transfer from the special memorandum account or by a deposit of cash, margin securities, exempted securities, or any combination thereof.

(3) *Time limits.* (i) A margin call shall be satisfied within one payment period after the margin deficiency was created or increased.

(ii) The payment period may be extended for one or more limited periods upon application by the creditor to its examining authority unless the examining authority believes that the creditor is not acting in good faith or that the creditor has not sufficiently determined that exceptional circumstances warrant such action. Applications shall be filed and acted upon prior to the end of the payment period or the expiration of any subsequent extension.

(4) *Satisfaction restriction.* Any transaction, position, or deposit that is used to satisfy one requirement under this part shall be unavailable to satisfy any other requirement.

(d) *Liquidation in lieu of deposit.* If any margin call is not met in full within the required time, the creditor shall liquidate securities sufficient to meet the margin call or to eliminate any margin deficiency existing on the day such liquidation is required, whichever is less. If the margin deficiency created or increased is $1000 or less, no action need be taken by the creditor.

(e) *Withdrawals of cash or securities.* (1) Cash or securities may be withdrawn from an account, except if:

(i) Additional cash or securities are required to be deposited into the

account for a transaction on the same or a previous day; or

(ii) The withdrawal, together with other transactions, deposits, and withdrawals on the same day, would create or increase a margin deficiency.

(2) Margin excess may be withdrawn or may be transferred to the special memorandum account (§ 220.5) by making a single entry to that account which will represent a debit to the margin account and a credit to the special memorandum account.

(3) If a creditor does not receive a distribution of cash or securities which is payable with respect to any security in a margin account on the day it is payable and withdrawal would not be permitted under this paragraph (e), a withdrawal transaction shall be deemed to have occurred on the day the distribution is payable.

(f) *Interest, service charges, etc.* (1) Without regard to the other provisions of this section, the creditor, in its usual practice, may debit the following items to a margin account if they are considered in calculating the balance of such account:

(i) Interest charged on credit maintained in the margin account;

(ii) Premiums on securities borrowed in connection with short sales or to effect delivery;

(iii) Dividends, interest, or other distributions due on borrowed securities;

(iv) Communication or shipping charges with respect to transactions in the margin account; and

(v) Any other service charges which the creditor may impose.

(2) A creditor may permit interest, dividends, or other distributions credited to a margin account to be withdrawn from the account if:

(i) The withdrawal does not create or increase a margin deficiency in the account; or

(ii) The current market value of any securities withdrawn does not exceed 10 percent of the current market value of the security with respect to which they were distributed.

**§ 220.5 Special memorandum account.**

(a) A special memorandum account (SMA) may be maintained in conjunction with a margin account. A single entry amount may be used to represent both a credit to the SMA and a debit to the margin account. A transfer between the two accounts may be effected by an increase or reduction in the entry. When computing the equity in a margin account, the single entry amount shall be considered as a debit in the margin account. A payment to the customer or on the customer's behalf or a transfer to any of the customer's other accounts from the SMA reduces the single entry amount.

(b) The SMA may contain the following entries:

(1) Dividend and interest payments;

(2) Cash not required by this part, including cash deposited to meet a maintenance margin call or to meet any requirement of a self-regulatory organization that is not imposed by this part;

(3) Proceeds of a sale of securities or cash no longer required on any expired or liquidated security position that may be withdrawn under § 220.4(e); and

(4) Margin excess transferred from the margin account under § 220.4(e)(2).

**§ 220.6 Good faith account.**

In a good faith account, a creditor may effect or finance customer transactions in accordance with the following provisions:

(a) *Securities entitled to good faith margin*—(1) *Permissible transactions.* A creditor may effect and finance transactions involving the buying, carrying, or trading of any security entitled to ''good faith'' margin as set forth in § 220.12 (the Supplement).

(2) *Required margin.* The required margin is set forth in § 220.12 (the Supplement).

(3) *Satisfaction of margin.* Required margin may be satisfied by a transfer from the special memorandum account or by a deposit of cash, securities entitled to ''good faith'' margin as set forth in § 220.12 (the Supplement), any other asset that is not a security, or any combination thereof. An asset that is not a security shall have a margin value determined by the creditor in good faith.

(b) *Arbitrage.* A creditor may effect and finance for any customer bona fide arbitrage transactions. For the purpose of this section, the term ''bona fide arbitrage'' means:

(1) A purchase or sale of a security in one market together with an offsetting sale or purchase of the same security in a different market at as nearly the same time as practicable for the purpose of taking advantage of a difference in prices in the two markets; or

(2) A purchase of a security which is, without restriction other than the payment of money, exchangeable or convertible within 90 calendar days of the purchase into a second security together with an offsetting sale of the second security at or about the same time, for the purpose of taking advantage of a concurrent disparity in the prices of the two securities.

(c) *''Prime broker'' transactions.* A creditor may effect transactions for a customer as part of a ''prime broker'' arrangement in conformity with SEC guidelines.

(d) *Credit to ESOPs.* A creditor may extend and maintain credit to employee stock ownership plans without regard to the other provisions of this part.

(e) *Nonpurpose credit.* (1) A creditor may:

(i) Effect and carry transactions in commodities;

(ii) Effect and carry transactions in foreign exchange;

(iii) Extend and maintain secured or unsecured nonpurpose credit, subject to the requirements of paragraph (e)(2) of this section.

(2) Every extension of credit, except as provided in paragraphs (e)(1)(i) and (e)(1)(ii) of this section, shall be deemed to be purpose credit unless, prior to extending the credit, the creditor accepts in good faith from the customer a written statement that it is not purpose credit. The statement shall conform to the requirements established by the Board.

**§ 220.7 Broker-dealer credit account.**

(a) *Requirements.* In a broker-dealer credit account, a creditor may effect or finance transactions in accordance with the following provisions.

(b) *Purchase or sale of security against full payment.* A creditor may purchase any security from or sell any security to another creditor or person regulated by a foreign securities authority under a good faith agreement to promptly deliver the security against full payment of the purchase price.

(c) *Joint back office.* A creditor may effect or finance transactions of any of its owners if the creditor is a clearing and servicing broker or dealer owned jointly or individually by other creditors.

(d) *Capital contribution.* A creditor may extend and maintain credit to any partner or stockholder of the creditor for the purpose of making a capital contribution to, or purchasing stock of, the creditor, affiliated corporation or another creditor.

(e) *Emergency and subordinated credit.* A creditor may extend and maintain, with the approval of the appropriate examining authority:

(1) Credit to meet the emergency needs of any creditor; or

(2) Subordinated credit to another creditor for capital purposes, if the other creditor:

(i) Is an affiliated corporation or would not be considered a customer of the lender apart from the subordinated loan; or

(ii) Will not use the proceeds of the loan to increase the amount of dealing in securities for the account of the

creditor, its firm or corporation or an affiliated corporation.

(f) *Omnibus credit* (1) A creditor may effect and finance transactions for a broker or dealer who is registered with the SEC under section 15 of the Act and who gives the creditor written notice that:

(i) All securities will be for the account of customers of the broker or dealer; and

(ii) Any short sales effected will be short sales made on behalf of the customers of the broker or dealer other than partners.

(2) The written notice required by paragraph (f)(1) of this section shall conform to any SEC rule on the hypothecation of customers' securities by brokers or dealers.

(g) *Special purpose credit.* A creditor may extend the following types of credit with good faith margin:

(1) Credit to finance the purchase or sale of securities for prompt delivery, if the credit is to be repaid upon completion of the transaction.

(2) Credit to finance securities in transit or surrendered for transfer, if the credit is to be repaid upon completion of the transaction.

(3) Credit to enable a broker or dealer to pay for securities, if the credit is to be repaid on the same day it is extended.

(4) Credit to an exempted borrower.

(5) Credit to a member of a national securities exchange or registered broker or dealer to finance its activities as a market maker or specialist.

(6) Credit to a member of a national securities exchange or registered broker or dealer to finance its activities as an underwriter.

**§ 220.8 Cash account.**

(a) *Permissible transactions.* In a cash account, a creditor, may:

(1) Buy for or sell to any customer any security or other asset if:

(i) There are sufficient funds in the account; or

(ii) The creditor accepts in good faith the customer's agreement that the customer will promptly make full cash payment for the security or asset before selling it and does not contemplate selling it prior to making such payment;

(2) Buy from or sell for any customer any security or other asset if:

(i) The security is held in the account; or

(ii) The creditor accepts in good faith the customer's statement that the security is owned by the customer or the customer's principal, and that it will be promptly deposited in the account;

(3) Issue, endorse, or guarantee, or sell an option for any customer as part of a covered option transaction; and

(4) Use an escrow agreement in lieu of the cash, cash equivalents or underlying asset position if:

(i) In the case of a short call or a short put, the creditor is advised by the customer that the required securities, assets or cash are held by a person authorized to issue an escrow agreement and the creditor independently verifies that the appropriate escrow agreement will be delivered by the person promptly; or

(ii) In the case of a call issued, endorsed, guaranteed, or sold on the same day the underlying asset is purchased in the account and the underlying asset is to be delivered to a person authorized to issue an escrow agreement, the creditor verifies that the appropriate escrow agreement will be delivered by the person promptly.

(b) *Time periods for payment; cancellation or liquidation.* (1) *Full cash payment.* A creditor shall obtain full cash payment for customer purchases:

(i) Within one payment period of the date:

(A) Any nonexempted security was purchased;

(B) Any when-issued security was made available by the issuer for delivery to purchasers;

(C) Any ''when distributed'' security was distributed under a published plan;

(D) A security owned by the customer has matured or has been redeemed and a new refunding security of the same issuer has been purchased by the customer, provided:

(*1*) The customer purchased the new security no more than 35 calendar days prior to the date of maturity or redemption of the old security;

(*2*) The customer is entitled to the proceeds of the redemption; and

(*3*) The delayed payment does not exceed 103 percent of the proceeds of the old security.

(ii) In the case of the purchase of a foreign security, within one payment period of the trade date or within one day after the date on which settlement is required to occur by the rules of the foreign securities market, provided this period does not exceed the maximum time permitted by this part for delivery against payment transactions.

(2) *Delivery against payment.* If a creditor purchases for or sells to a customer a security in a delivery against payment transaction, the creditor shall have up to 35 calendar days to obtain payment if delivery of the security is delayed due to the mechanics of the transaction and is not related to the customer's willingness or ability to pay.

(3) *Shipment of securities, extension.* If any shipment of securities is incidental to consummation of a transaction, a creditor may extend the payment period by the number of days required for shipment, but not by more than one additional payment period.

(4) *Cancellation; liquidation; minimum amount.* A creditor shall promptly cancel or otherwise liquidate a transaction or any part of a transaction for which the customer has not made full cash payment within the required time. A creditor may, at its option, disregard any sum due from the customer not exceeding $1000.

(c) *90 day freeze.* (1) If a nonexempted security in the account is sold or delivered to another broker or dealer without having been previously paid for in full by the customer, the privilege of delaying payment beyond the trade date shall be withdrawn for 90 calendar days following the date of sale of the security. Cancellation of the transaction other than to correct an error shall constitute a sale.

(2) The 90 day freeze shall not apply if:

(i) Within the period specified in paragraph (b)(1) of this section, full payment is received or any check or draft in payment has cleared and the proceeds from the sale are not withdrawn prior to such payment or check clearance; or

(ii) The purchased security was delivered to another broker or dealer for deposit in a cash account which holds sufficient funds to pay for the security. The creditor may rely on a written statement accepted in good faith from the other broker or dealer that sufficient funds are held in the other cash account.

(d) *Extension of time periods; transfers.* (1) Unless the creditor's examining authority believes that the creditor is not acting in good faith or that the creditor has not sufficiently determined that exceptional circumstances warrant such action, it may upon application by the creditor:

(i) Extend any period specified in paragraph (b) of this section;

(ii) Authorize transfer to another account of any transaction involving the purchase of a margin or exempted security; or

(iii) Grant a waiver from the 90 day freeze.

(2) Applications shall be filed and acted upon prior to the end of the payment period, or in the case of the purchase of a foreign security within the period specified in paragraph (b)(1)(ii) of this section, or the expiration of any subsequent extension.

**§ 220.9 Clearance of securities, options, and futures.**

(a) *Credit for clearance of securities.* The provisions of this part shall not apply to the extension or maintenance of any credit that is not for more than one day if it is incidental to the clearance of transactions in securities directly between members of a national securities exchange or association or through any clearing agency registered with the SEC.

(b) *Deposit of securities with a clearing agency.* The provisions of this part shall not apply to the deposit of securities with an option or futures clearing agency for the purpose of meeting the deposit requirements of the agency if:

(1) The clearing agency:

(i) Issues, guarantees performance on, or clears transactions in, any security (including options on any security, certificate of deposit, securities index or foreign currency); or

(ii) Guarantees performance of contracts for the purchase or sale of a commodity for future delivery or options on such contracts;

(2) The clearing agency is registered with the Securities and Exchange Commission or is the clearing agency for a contract market regulated by the Commodity Futures Trading Commission; and

(3) The deposit consists of any margin security and complies with the rules of the clearing agency that have been approved by the Securities and Exchange Commission or the Commodity Futures Trading Commission.

**§ 220.10 Borrowing and lending securities.**

(a) Without regard to the other provisions of this part, a creditor may borrow or lend securities for the purpose of making delivery of the securities in the case of short sales, failure to receive securities required to be delivered, or other similar situations. If a creditor reasonably anticipates a short sale or fail transaction, such borrowing may be made up to one standard settlement cycle in advance of trade date.

(b) A creditor may lend foreign securities to a foreign person (or borrow such securities for the purpose of relending them to a foreign person) for any purpose lawful in the country in which they are to be used.

(c) A creditor that is an exempted borrower may lend securities without regard to the other provisions of this part and a creditor may borrow securities from an exempted borrower without regard to the other provisions of this part.

**§ 220.11 Requirements for the list of marginable OTC stocks and the list of foreign margin stocks.**

(a) *Requirements for inclusion on the list of marginable OTC stocks.* Except as provided in paragraph (f) of this section, OTC margin stock shall meet the following requirements:

(1) Four or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such stock, as determined by the Board, is at least $5 per share;

(3) The stock is registered under section 12 of the Act, is issued by an insurance company subject to section 12(g)(2)(G) of the Act, is issued by a closed-end investment management company subject to registration pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), is an American Depository Receipt (ADR) of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of an issuer required to file reports under section 15(d) of the Act;

(4) Daily quotations for both bid and asked prices for the stock are continously available to the general public;

(5) The stock has been publicly traded for at least six months;

(6) The issuer has at least $4 million of capital, surplus, and undivided profits;

(7) There are 400,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors or beneficial owners of more than 10 percent of the stock;

(8) There are 1,200 or more holders of record, as defined in SEC Rule 12g5–1 (17 CFR 240.12g5–1), of the stock who are not officers, directors or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such stock as determined by the Board, is at least 500 shares; and

(9) The issuer or a predecessor in interest has been in existence for at least three years.

(b) *Requirements for continued inclusion on the list of marginable OTC stocks.* Except as provided in paragraph (f) of this section, OTC margin stock shall meet the following requirements:

(1) Three or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such stocks, as determined by the Board, is at least $2 per share;

(3) The stock is registered as specified in paragraph (a)(3) of this section;

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public; ;

(5) The issuer has at least $1 million of capital, surplus, and undivided profits;

(6) There are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock; and

(7) There continue to be 800 or more holders of record, as defined in SEC Rule 12g5–1 (17 CFR 240.12g5–1), of the stock who are not officers, directors, or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such stock, as determined by the Board, is at least 300 shares.

(c) *Requirements for inclusion on the list of foreign margin stocks.* Except as provided in paragraph (f) of this section, a foreign security shall meet the following requirements before being placed on the *List of Foreign Margin Stocks:*

(1) The security is an equity security that is listed for trading on or through the facilities of a foreign securities exchange or a recognized foreign securities market and has been trading on such exchange or market for at least six months;

(2) Daily quotations for both bid and asked or last sale prices for the security provided by the foreign securities exchange or foreign securities market on which the security is traded are continuously available to creditors in the United States pursuant to an electronic quotation system;

(3) The aggregate market value of shares, the ownership of which is unrestricted, is not less than $1 billion;

(4) The average weekly trading volume of such security during the preceding six months is either at least 200,000 shares or $1 million; and

(5) The issuer or a predecessor in interest has been in existence for at least five years.

(d) *Requirements for continued inclusion on the list of foreign margin stocks.* Except as provided in paragraph (f) of this section, a foreign security shall meet the following requirements to remain on the *List of Foreign Margin Stocks:*

(1) The security continues to meet the requirements specified in paragraphs (c)(1) and (2) of this section;

(2) The aggregate market value of shares, the ownership of which is

unrestricted, is not less than $500 million; and

(3) The average weekly trading volume of such security during the preceding six months is either at least 100,000 shares or $500,000.

(e) *Removal from the list.* The Board shall periodically remove from the lists any stock that:

(1) Ceases to exist or of which the issuer ceases to exist; or

(2) No longer substantially meets the provisions of paragraphs (b) or (d) of this section or the definition of OTC margin stock.

(f) *Discretionary authority of Board.* Without regard to other paragraphs of this section, the Board may add to, or omit or remove from the list of marginable OTC stocks and the list of foreign margin stocks an equity security, if in the judgment of the Board, such action is necessary or appropriate in the public interest.

(g) *Unlawful representations.* It shall be unlawful for any creditor to make, or cause to be made, any representation to the effect that the inclusion of a security on the list of marginable OTC stocks or the list of foreign margin stocks is evidence that the Board or the SEC has in any way passed upon the merits of, or given approval to, such security or any transactions therein. Any statement in an advertisement or other similar communication containing a reference to the Board in connection with the lists or stocks on those lists shall be an unlawful representation.

**§ 220.12 Supplement: Margin requirements.**

The required margin for each security position held in a margin account shall be as follows:

(a) Margin equity security, except for an exempted security, money market mutual fund or exempted securities mutual fund, warrant on a securities index or foreign currency or a long position in an option: 50 percent of the current market value of the security or the percentage set by the regulatory authority where the trade occurs, whichever is greater.

(b) Exempted security, non-equity security, money market mutual fund or exempted securities mutual fund: The margin required by the creditor in good faith or the percentage set by the regulatory authority where the trade occurs, whichever is greater.

(c) Short sale of a nonexempted security, except for a non-equity security:

(1) 150 percent of the current market value of the security; or

(2) 100 percent of the current market value if a security exchangeable or convertible within 90 calendar days without restriction other than the payment of money into the security sold short is held in the account, provided that any long call to be used as margin in connection with a short sale of the underlying security is an American-style option issued by a registered clearing corporation and listed or traded on a registered national securities exchange with an exercise price that does not exceed the price at which the underlying security was sold short.

(d) Short sale of an exempted security or non-equity security: 100 percent of the current market value of the security plus the margin required by the creditor in good faith.

(e) Nonmargin, nonexempted equity security: 100 percent of the current market value.

(f) Put or call on a security, certificate of deposit, securities index or foreign currency or a warrant on a securities index or foreign currency:

(1) In the case of puts and calls issued by a registered clearing corporation and listed or traded on a registered national securities exchange or a registered securities association and registered warrants on a securities index or foreign currency, the amount, or other position specified by the rules of the registered national securities exchange or the registered securities association authorized to trade the option or warrant, provided that all such rules have been approved or amended by the SEC; or

(2) In the case of all other puts and calls, the amount, or other position, specified by the maintenance rules of the creditor's examining authority.

**§§ 220.13—220.18 [Removed]**

4. Sections 220.13 through 220.18 are removed.

**§ 220.126 [Removed and Reserved]**

5. Section 220.126 is removed and reserved.

6. Part 221 is revised to read as follows:

## PART 221—CREDIT BY BANKS AND PERSONS OTHER THAN BROKERS OR DEALERS FOR THE PURPOSE OF PURCHASING OR CARRYING MARGIN STOCK (REGULATION U)

Sec.

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221.119 Applicability of plan-lender provisions to financing of stock options and stock purchase rights qualified or restricted under Internal Revenue Code.
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221.123 Combined credit for exercising employee stock options and paying income taxes incurred as a result of such exercise.
221.124 Purchase of debt securities to finance corporate takeovers.
221.125 Credit to brokers and dealers.

**Authority:** 15 U.S.C. 78c, 78g, 78q, and 78w.

**§ 221.1 Authority, purpose, and scope.**

(a) *Authority.* Regulation U (this part) is issued by the Board of Governors of the Federal Reserve System (the Board) pursuant to the Securities Exchange Act of 1934 (the Act) (15 U.S.C. 78a *et seq.*).

(b) *Purpose and scope.* (1) This part imposes credit restrictions upon persons other than brokers or dealers (hereinafter lenders) that extend credit for the purpose of buying or carrying

margin stock if the credit is secured directly or indirectly by margin stock. Lenders include ''banks'' (as defined in § 221.2) and other persons who are required to register with the Board under § 221.3(b). Lenders may not extend more than the maximum loan value of the collateral securing such credit, as set by the Board in § 221.7 (the Supplement).

(2) This part does not apply to clearing agencies regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission that accept deposits of margin stock in connection with:

(i) The issuance of, or guarantee of, or the clearance of transactions in, any security (including options on any security, certificate of deposit, securities index or foreign currency); or

(ii) The guarantee of contracts for the purchase or sale of a commodity for future delivery or options on such contracts.

(3) This part does not apply to credit extended to an exempted borrower.

(c) *Availability of forms.* The forms referenced in this part are available from the Federal Reserve Banks.

**§ 221.2 Definitions.**

The terms used in this part have the meanings given them in section 3(a) of the Act or as defined in this section as follows:

*Affiliate* means:

(1) For banks:

(i) Any bank holding company of which a bank is a subsidiary within the meaning of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(d));

(ii) Any other subsidiary of such bank holding company; and

(iii) Any other corporation, business trust, association, or other similar organization that is an affiliate as defined in section 2(b) of the Banking Act of 1933 (12 U.S.C. 221a(c));

(2) For nonbank lenders, *affiliate* means any person who, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with the lender.

*Bank.* (1) *Bank.* Has the meaning given to it in section 3(a)(6) of the Act (15 U.S.C. 78c(a)(6)) and includes:

(i) Any subsidiary of a bank;

(ii) Any corporation organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611); and

(iii) Any agency or branch of a foreign bank located within the United States.

(2) *Bank* does not include:

(i) Any savings and loan association;

(ii) Any credit union;

(iii) Any lending institution that is an instrumentality or agency of the United States; or

(iv) Any member of a national securities exchange.

*Carrying* credit is credit that enables a customer to maintain, reduce, or retire indebtedness originally incurred to purchase a security that is currently a margin stock.

*Current market value* of:

(1) A security means:

(i) If quotations are available, the closing sale price of the security on the preceding business day, as appearing on any regularly published reporting or quotation service; or

(ii) If there is no closing sale price, the lender may use any reasonable estimate of the market value of the security as of the close of business on the preceding business day; or

(iii) If the credit is used to finance the purchase of the security, the total cost of purchase, which may include any commissions charged.

(2) Any other collateral means a value determined by any reasonable method.

*Customer* excludes an exempted borrower and includes any person or persons acting jointly, to or for whom a lender extends or maintains credit.

*Examining authority* means:

(1) The national securities exchange or national securities association of which a broker or dealer is a member; or

(2) If a member of more than one self-regulatory organization, the organization designated by the Securities and Exchange Commission as the examining authority for the broker or dealer.

*Exempted borrower* means a member of a national securities exchange or a registered broker or dealer, a substantial portion of whose business consists of transactions with persons other than brokers or dealers, and includes a borrower who:

(1) Maintains at least 1000 active accounts on an annual basis for persons other than brokers, dealers, and persons associated with a broker or dealer;

(2) Earns at least $10 million in gross revenues on an annual basis from transactions with persons other than brokers, dealers, and persons associated with a broker or dealer; or

(3) Earns at least 10 percent of its gross revenues on an annual basis from transactions with persons other than brokers, dealers, and persons associated with a broker-dealer.

*Good faith* with respect to:

(1) The loan value of collateral means that amount (not exceeding 100 per cent of the current market value of the collateral) which a lender, exercising sound credit judgment, would lend, without regard to the customer's other assets held as collateral in connection with unrelated transactions.

(2) Making a determination or accepting a statement concerning a borrower means that the lender or its duly authorized representative is alert to the circumstances surrounding the credit, and if in possession of information that would cause a prudent person not to make the determination or accept the notice or certification without inquiry, investigates and is satisfied that it is correct;

*In the ordinary course of business* means occurring or reasonably expected to occur in carrying out or furthering any business purpose, or in the case of an individual, in the course of any activity for profit or the management or preservation of property.

*Indirectly secured.* (1) Includes any arrangement with the customer under which:

(i) The customer's right or ability to sell, pledge, or otherwise dispose of margin stock owned by the customer is in any way restricted while the credit remains outstanding; or

(ii) The exercise of such right is or may be cause for accelerating the maturity of the credit.

(2) Does not include such an arrangement if:

(i) After applying the proceeds of the credit, not more than 25 percent of the value (as determined by any reasonable method) of the assets subject to the arrangement is represented by margin stock;

(ii) It is a lending arrangement that permits accelerating the maturity of the credit as a result of a default or renegotiation of another credit to the customer by another lender that is not an affiliate of the lender;

(iii) The lender holds the margin stock only in the capacity of custodian, depositary, or trustee, or under similar circumstances, and, in good faith, has not relied upon the margin stock as collateral; or

(iv) The lender, in good faith, has not relied upon the margin stock as collateral in extending or maintaining the particular credit.

*Lender* means:

(1) Any bank; or

(2) Any person subject to the registration requirements of this part.

*Margin stock* means:

(1) Any equity security registered or having unlisted trading privileges on a national securities exchange;

(2) Any OTC security designated as qualified for trading in the National Market System under a designation plan approved by the Securities and Exchange Commission (NMS security);

(3) Any debt security convertible into a margin stock or carrying a warrant or right to subscribe to or purchase a margin stock;

(4) Any warrant or right to subscribe to or purchase a margin stock; or

(5) Any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), other than:

(i) A company licensed under the Small Business Investment Company Act of 1958, as amended (15 U.S.C. 661); or

(ii) A company which has at least 95 percent of its assets continuously invested in exempted securities (as defined in 15 U.S.C. 78c(a)(12)); or

(iii) A company which issues face-amount certificates as defined in 15 U.S.C. 80a–2(a)(15), but only with respect of such securities; or

(iv) A company which is considered a money market fund under SEC Rule 2a–7 (17 CFR 270.2a–7).

*Maximum loan value* is the percentage of current market value assigned by the Board under § 221.7 (the Supplement) to specified types of collateral. The maximum loan value of margin stock is stated as a percentage of its current market value. Puts, calls and combinations thereof that do not qualify as margin stock have no loan value. All other collateral has good faith loan value.

*Nonbank lender* means any person subject to the registration requirements of this part.

*Purpose credit* is any credit for the purpose, whether immediate, incidental, or ultimate, of buying or carrying margin stock.

**§ 221.3 General requirements.**

(a) *Extending, maintaining, and arranging credit*—(1) *Extending credit.* No lender, except a plan-lender, as defined in § 221.4(a), shall extend any purpose credit, secured directly or indirectly by margin stock, in an amount that exceeds the maximum loan value of the collateral securing the credit.

(2) *Maintaining credit.* A lender may continue to maintain any credit initially extended in compliance with this part, regardless of:

(i) Reduction in the customer's equity resulting from change in market prices;

(ii) Change in the maximum loan value prescribed by this part; or

(iii) Change in the status of the security (from nonmargin to margin) securing an existing purpose credit.

(3) *Arranging credit.* No lender may arrange for the extension or maintenance of any purpose credit, except upon the same terms and conditions under which the lender itself may extend or maintain purpose credit under this part.

(b) *Registration of nonbank lenders; termination of registration; annual report*—(1) *Registration.* Every person other than a person subject to part 220 of this chapter or a bank who, in the ordinary course of business, extends or maintains credit secured, directly or indirectly, by any margin stock shall register on Federal Reserve Form FR G–1 (OMB control number 7100–0011) within 30 days after the end of any calendar quarter during which:

(i) The amount of credit extended equals $200,000 or more; or

(ii) The amount of credit outstanding at any time during that calendar quarter equals $500,000 or more.

(2) *Deregistration.* A registered nonbank lender may apply to terminate its registration, by filing Federal Reserve Form FR G–2 (OMB control number 7100–0011), if the lender has not, during the preceding six calendar months, had more than $200,000 of such credit outstanding. Registration shall be deemed terminated when the application is approved by the Board.

(3) *Annual report.* Every registered nonbank lender shall, within 30 days following June 30 of every year, file Form FR G–4 (OMB control number 7100–0011).

(4) *Where to register and file applications and reports.* Registration statements, applications to terminate registration, and annual reports shall be filed with the Federal Reserve Bank of the district in which the principal office of the lender is located.

(c) *Purpose statement*—(1) *General rule*—(i) *Banks.* Except for credit extended under paragraph (c)(2) of this section, whenever a bank extends credit secured directly or indirectly by any margin stock, in an amount exceeding $100,000, the bank shall require its customer to execute Form FR U–1 (OMB No. 7100–0115), which shall be signed and accepted by a duly authorized officer of the bank acting in good faith.

(ii) *Nonbank lenders.* Except for credit extended under paragraph (c)(2) of this section or § 221.4, whenever a nonbank lender extends credit secured directly or indirectly by any margin stock, the nonbank lender shall require its customer to execute Form FR G–3 (OMB control number 7100–0018), which shall be signed and accepted by a duly authorized representative of the nonbank lender acting in good faith.

(2) *Purpose statement for revolving-credit or multiple-draw agreements or financing of securities purchases on a payment-against-delivery basis*—(i) *Banks.* If a bank extends credit, secured directly or indirectly by any margin stock, in an amount exceeding $100,000, under a revolving-credit or other multiple-draw agreement, Form FR U–1 must be executed at the time the credit arrangement is originally established and must be amended as described in paragraph (c)(2)(iv) of this section for each disbursement if all of the collateral for the agreement is not pledged at the time the agreement is originally established.

(ii) *Nonbank lenders.* If a nonbank lender extends credit, secured directly or indirectly by any margin stock, under a revolving-credit or other multiple-draw agreement, Form FR G–3 must be executed at the time the credit arrangement is originally established and must be amended as described in paragraph (c)(2)(iv) of this section for each disbursement if all of the collateral for the agreement is not pledged at the time the agreement is originally established.

(iii) *Collateral.* If a purpose statement executed at the time the credit arrangement is initially made indicates that the purpose is to purchase or carry margin stock, the credit will be deemed in compliance with this part if:

(A) The maximum loan value of the collateral at least equals the aggregate amount of funds actually disbursed; or

(B) At the end of any day on which credit is extended under the agreement, the lender calls for additional collateral sufficient to bring the credit into compliance with § 221.7 (the Supplement).

(iv) *Amendment of purpose statement.* For any purpose credit disbursed under the agreement, the lender shall obtain and attach to the executed Form FR U–1 or FR G–3 a current list of collateral which adequately supports all credit extended under the agreement.

(d) *Single credit rule.* (1) All purpose credit extended to a customer shall be treated as a single credit, and all the collateral securing such credit shall be considered in determining whether or not the credit complies with this part, except that syndicated loans need not be aggregated with other unrelated purpose credit extended by the same lender.

(2) A lender that has extended purpose credit secured by margin stock may not subsequently extend unsecured purpose credit to the same customer unless the combined credit does not exceed the maximum loan value of the collateral securing the prior credit.

(3) If a lender extended unsecured purpose credit to a customer prior to the extension of purpose credit secured by margin stock, the credits shall be

combined and treated as a single credit solely for the purposes of the withdrawal and substitution provision of paragraph (f) of this section.

(4) If a lender extends purpose credit secured by any margin stock and non-purpose credit to the same customer, the lender shall treat the credits as two separate loans and may not rely upon the required collateral securing the purpose credit for the nonpurpose credit.

(e) *Exempted borrowers.* (1) An exempted borrower that has been in existence for less than one year may meet the definition of exempted borrower based on a six-month period.

(2) Once a member of a national securities exchange or registered broker or dealer ceases to qualify as an exempted borrower, it shall notify its lenders of this fact. Any new extensions of credit to such a borrower, including rollovers, renewals, and additional draws on existing lines of credit, are subject to the provisions of this part.

(f) *Withdrawals and substitutions.* (1) A lender may permit any withdrawal or substitution of cash or collateral by the customer if the withdrawal or substitution would not:

(i) Cause the credit to exceed the maximum loan value of the collateral; or

(ii) Increase the amount by which the credit exceeds the maximum loan value of the collateral.

(2) For purposes of this section, the maximum loan value of the collateral on the day of the withdrawal or substitution shall be used.

(g) *Exchange offers.* To enable a customer to participate in a reorganization, recapitalization or exchange offer that is made to holders of an issue of margin stock, a lender may permit substitution of the securities received. A nonmargin, nonexempted security acquired in exchange for a margin stock shall be treated as if it is margin stock for a period of 60 days following the exchange.

(h) *Renewals and extensions of maturity.* A renewal or extension of maturity of a credit need not be considered a new extension of credit if the amount of the credit is increased only by the addition of interest, service charges, or taxes with respect to the credit.

(i) *Transfers of credit.* (1) A transfer of a credit between customers or between lenders shall not be considered a new extension of credit if:

(i) The original credit was extended by a lender in compliance with this part or by a lender subject to part 207 of this chapter in effect prior to April 1, 1998, (See part 207 appearing in the 12 CFR parts 200 to 219 edition revised as of January 1, 1997), in a manner that would have complied with this part;

(ii) The transfer is not made to evade this part;

(iii) The amount of credit is not increased; and

(iv) The collateral for the credit is not changed.

(2) Any transfer between customers at the same lender shall be accompanied by a statement by the transferor customer describing the circumstances giving rise to the transfer and shall be accepted and signed by a representative of the lender acting in good faith. The lender shall keep such statement with its records of the transferee account.

(3) When a transfer is made between lenders, the transferee shall obtain a copy of the Form FR U–1 or Form FR G–3 originally filed with the transferor and retain the copy with its records of the transferee account. If no form was originally filed with the transferor, the transferee may accept in good faith a statement from the transferor describing the purpose of the loan and the collateral securing it.

(j) *Action for lender's protection.* Nothing in this part shall require a bank to waive or forego any lien or prevent a bank from taking any action it deems necessary in good faith for its protection.

(k) *Mistakes in good faith.* A mistake in good faith in connection with the extension or maintenance of credit shall not be a violation of this part.

### § 221.4 Employee stock option, purchase, and ownership plans.

(a) *Plan-lender; eligible plan.* (1) Plan-lender means any corporation, (including a wholly-owned subsidiary, or a lender that is a thrift organization whose membership is limited to employees and former employees of the corporation, its subsidiaries or affiliates) that extends or maintains credit to finance the acquisition of margin stock of the corporation, its subsidiaries or affiliates under an eligible plan.

(2) *Eligible plan.* An eligible plan means any employee stock option, purchase, or ownership plan adopted by a corporation and approved by its stockholders that provides for the purchase of margin stock of the corporation, its subsidiaries, or affiliates.

(b) *Credit to exercise rights under or finance an eligible plan.* (1) If a plan-lender extends or maintains credit under an eligible plan, any margin stock that directly or indirectly secured that credit shall have good faith loan value.

(2) Credit extended under this section shall be treated separately from credit extended under any other section of this part except § 221.3(b)(1) and (b)(3).

(c) *Credit to ESOPs.* A nonbank lender may extend and maintain purpose credit without regard to the provisions of this part, except for § 221.3(b)(1) and (b)(3), if such credit is extended to an employee stock ownership plan (ESOP) qualified under section 401 of the Internal Revenue Code, as amended (26 U.S.C. 401).

### § 221.5 Special purpose loans to brokers and dealers.

(a) *Special purpose loans.* A lender may extend and maintain purpose credit to brokers and dealers without regard to the limitations set forth in §§ 221.3 and 221.7, if the credit is for any of the specific purposes and meets the conditions set forth in paragraph (c) of this section.

(b) *Written notice.* Prior to extending credit for more than a day under this section, the lender shall obtain and accept in good faith a written notice or certification from the borrower as to the purposes of the loan. The written notice or certification shall be evidence of continued eligibility for the special credit provisions until the borrower notifies the lender that it is no longer eligible or the lender has information that would cause a reasonable person to question whether the credit is being used for the purpose specified.

(c) *Types of special purpose credit.* The types of credit that may be extended and maintained on a good faith basis are as follows:

(1) *Hypothecation loans.* Credit secured by hypothecated customer securities that, according to written notice received from the broker or dealer, may be hypothecated by the broker or dealer under Securities and Exchange Commission (SEC) rules.

(2) *Temporary advances in payment-against-delivery transactions.* Credit to finance the purchase or sale of securities for prompt delivery, if the credit is to be repaid upon completion of the transaction.

(3) *Loans for securities in transit or transfer.* Credit to finance securities in transit or surrendered for transfer, if the credit is to be repaid upon completion of the transaction.

(4) *Intra-day loans.* Credit to enable a broker or dealer to pay for securities, if the credit is to be repaid on the same day it is extended.

(5) *Arbitrage loans.* Credit to finance proprietary or customer bona fide arbitrage transactions. For the purpose of this section bona fide arbitrage means:

(i) Purchase or sale of a security in one market, together with an offsetting

sale or purchase of the same security in a different market at nearly the same time as practicable, for the purpose of taking advantage of a difference in prices in the two markets; or

(ii) Purchase of a security that is, without restriction other than the payment of money, exchangeable or convertible within 90 calendar days of the purchase into a second security, together with an offsetting sale of the second security at or about the same time, for the purpose of taking advantage of a concurrent disparity in the price of the two securities.

(6) *Market maker and specialist loans.* Credit to a member of a national securities exchange or registered broker or dealer to finance its activities as a market maker or specialist.

(7) *Underwriter loans.* Credit to a member of a national securities exchange or registered broker or dealer to finance its activities as an underwriter.

(8) *Emergency loans.* Credit that is essential to meet emergency needs of the broker-dealer business arising from exceptional circumstances.

(9) *Capital contribution loans.* Capital contribution loans include:

(i) Credit that Board has exempted by order upon a finding that the exemption is necessary or appropriate in the public interest or for the protection of investors, provided the Securities Investor Protection Corporation certifies to the Board that the exemption is appropriate; or

(ii) Credit to a customer for the purpose of making a subordinated loan or capital contribution to a broker or dealer in conformity with the SEC's net capital rules and the rules of the broker's or dealer's examining authority, provided:

(A) The customer reduces the credit by the amount of any reduction in the loan or contribution to the broker or dealer; and

(B) The credit is not used to purchase securities issued by the broker or dealer in a public distribution.

(10) Credit to clearing brokers or dealers. Credit to a member of a national securities exchange or registered broker or dealer whose nonproprietary business is limited to financing and carrying the accounts of registered market makers.

### § 221.6 Exempted transactions.

A bank may extend and maintain purpose credit without regard to the provisions of this part if such credit is extended:

(a) To any bank;

(b) To any foreign banking institution;

(c) Outside the United States;

(d) To an employee stock ownership plan (ESOP) qualified under section 401 of the Internal Revenue Code (26 U.S.C. 401);

(e) To any plan lender as defined in § 221.4(a) to finance an eligible plan as defined in § 221.4(b), provided the bank has no recourse to any securities purchased pursuant to the plan;

(f) To any customer, other than a broker or dealer, to temporarily finance the purchase or sale of securities for prompt delivery, if the credit is to be repaid in the ordinary course of business upon completion of the transaction and is not extended to enable the customer to pay for securities purchased in an account subject to part 220 of this chapter;

(g) Against securities in transit, if the credit is not extended to enable the customer to pay for securities purchased in an account subject to part 220 of this chapter; or

(h) To enable a customer to meet emergency expenses not reasonably foreseeable, and if the extension of credit is supported by a statement executed by the customer and accepted and signed by an officer of the bank acting in good faith. For this purpose, emergency expenses include expenses arising from circumstances such as the death or disability of the customer, or some other change in circumstances involving extreme hardship, not reasonably foreseeable at the time the credit was extended. The opportunity to realize monetary gain or to avoid loss is not a ''change in circumstances'' for this purpose.

### § 221.7 Supplement: Maximum loan value of margin stock and other collateral.

(a) *Maximum loan value of margin stock.* The maximum loan value of any margin stock is fifty per cent of its current market value.

(b) *Maximum loan value of nonmargin stock and all other collateral.* The maximum loan value of nonmargin stock and all other collateral except puts, calls, or combinations thereof is their good faith loan value.

(c) *Maximum loan value of options.* Except for options that qualify as margin stock, puts, calls, and combinations thereof have no loan value.

## Interpretations

### § 221.101 Determination and effect of purpose of loan.

(a) Under this part the original purpose of a loan is controlling. In other words, if a loan originally is not for the purpose of purchasing or carrying margin stock, changes in the collateral for the loan do not change its exempted character.

(b) However, a so-called increase in the loan is necessarily on an entirely different basis. So far as the purpose of the credit is concerned, it is a new loan, and the question of whether or not it is subject to this part must be determined accordingly.

(c) Certain facts should also be mentioned regarding the determination of the purpose of a loan. Section 221.3(c) provides in that whenever a lender is required to have its customer execute a ''Statement of Purpose for an Extension of Credit Secured by Margin Stock,'' the statement must be accepted by the lender ''acting in good faith.'' The requirement of ''good faith'' is of vital importance here. Its application will necessarily vary with the facts of the particular case, but it is clear that the bank must be alert to the circumstances surrounding the loan. For example, if the loan is to be made to a customer who is not a broker or dealer in securities, but such a broker or dealer is to deliver margin stock to secure the loan or is to receive the proceeds of the loan, the bank would be put on notice that the loan would probably be subject to this part. It could not accept in good faith a statement to the contrary without obtaining a reliable and satisfactory explanation of the situation.

(d) Furthermore, the purpose of a loan means just that. It cannot be altered by some temporary application of the proceeds. For example, if a borrower is to purchase Government securities with the proceeds of a loan, but is soon thereafter to sell such securities and replace them with margin stock, the loan is clearly for the purpose of purchasing or carrying margin stock.

### § 221.102 Application to committed credit where funds are disbursed thereafter.

The Board has concluded that the date a commitment to extend credit becomes binding should be regarded as the date when the credit is extended, since:

(a) On that date the parties should be aware of law and facts surrounding the transaction; and

(b) Generally, the date of contract is controlling for purposes of margin regulations and Federal securities law, regardless of the delivery of cash or securities.

### § 221.103 Loans to brokers or dealers.

Questions have arisen as to the adequacy of statements received by lending banks under § 221.3(c), ''Purpose Statement,'' in the case of loans to brokers or dealers secured by margin stock where the proceeds of the loans are to be used to finance customer transactions involving the purchasing or

carrying of margin stock. While some such loans may qualify for exemption under §§ 221.1(b)(2), 221.4, 221.5 or 221.6, unless they do qualify for such an exemption they are subject to this part. For example, if a loan so secured is made to a broker to furnish cash working capital for the conduct of his brokerage business (i.e., for purchasing and carrying securities for the account of customers), the maximum loan value prescribed in § 221.7 (the Supplement) would be applicable unless the loan should be of a kind exempted under this part. This result would not be affected by the fact that the margin stock given as security for the loan was or included margin stock owned by the brokerage firm. In view of the foregoing, the statement referred to in § 221.3(c) which the lending bank must accept in good faith in determining the purpose of the loan would be inadequate if the form of statement accepted or used by the bank failed to call for answers which would indicate whether or not the loan was of the kind discussed elsewhere in this section.

**§ 221.104 Federal credit unions.**

For text of the interpretation on Federal credit unions, see 12 CFR 220.110.

**§ 221.105 Arranging for extensions of credit to be made by a bank.**

For text of the interpretation on Arranging for extensions of credit to be made by a bank, see 12 CFR 220.111.

**§ 221.106 Reliance in ''good faith'' on statement of purpose of loan.**

(a) Certain situations have arisen from time to time under this part wherein it appeared doubtful that, in the circumstances, the lending banks may have been entitled to rely upon the statements accepted by them in determining whether the purposes of certain loans were such as to cause the loans to be not subject to the part.

(b) The use by a lending bank of a statement in determining the purpose of a particular loan is, of course, provided for by § 221.3(c). However, under that paragraph a lending bank may accept such statement only if it is ''acting in good faith.'' As the Board stated in the interpretation contained in § 221.101, the ''requirement of 'good faith' is of vital importance''; and, to fulfill such requirement, ''it is clear that the bank must be alert to the circumstances surrounding the loan.''

(c) Obviously, such a statement would not be accepted by the bank in ''good faith'' if at the time the loan was made the bank had knowledge, from any source, of facts or circumstances which were contrary to the natural purport of the statement, or which were sufficient reasonably to put the bank on notice of the questionable reliability or completeness of the statement.

(d) Furthermore, the same requirement of ''good faith'' is to be applied whether the statement accepted by the bank is signed by the borrower or by an officer of the bank. In either case, ''good faith'' requires the exercise of special diligence in any instance in which the borrower is not personally known to the bank or to the officer who processes the loan.

(e) The interpretation set forth in § 221.101 contains an example of the application of the ''good faith'' test. There it was stated that ''if the loan is to be made to a customer who is not a broker or dealer in securities, but such a broker or dealer is to deliver margin stock to secure the loan or is to receive the proceeds of the loan, the bank would be put on notice that the loan would probably be subject to this part. It could not accept in good faith a statement to the contrary without obtaining a reliable and satisfactory explanation of the situation''.

(f) Moreover, and as also stated by the interpretation contained in § 221.101, the purpose of a loan, of course, ''cannot be altered by some temporary application of the proceeds. For example, if a borrower is to purchase Government securities with the proceeds of a loan, but is soon thereafter to sell such securities and replace them with margin stock, the loan is clearly for the purpose of purchasing or carrying margin stock''. The purpose of a loan therefore, should not be determined upon a narrow analysis of the immediate use to which the proceeds of the loan are put. Accordingly, a bank acting in ''good faith'' should carefully scrutinize cases in which there is any indication that the borrower is concealing the true purpose of the loan, and there would be reason for special vigilance if margin stock is substituted for bonds or nonmargin stock soon after the loan is made, or on more than one occasion.

(g) Similarly, the fact that a loan made on the borrower's signature only, for example, becomes secured by margin stock shortly after the disbursement of the loan usually would afford reasonable grounds for questioning the bank's apparent reliance upon merely a statement that the purpose of the loan was not to purchase or carry margin stock.

(h) The examples in this section are, of course, by no means exhaustive. They simply illustrate the fundamental fact that no statement accepted by a lender is of any value for the purposes of this part unless the lender accepting the statement is ''acting in good faith'', and that ''good faith'' requires, among other things, reasonable diligence to learn the truth.

**§ 221.107 Arranging loan to purchase open-end investment company shares.**

For text of the interpretation on Arranging loan to purchase open-end investment company shares, see 12 CFR 220.112.

**§ 221.108 Effect of registration of stock subsequent to making of loan.**

(a) The Board recently was asked whether a loan by a bank to enable the borrower to purchase a newly issued nonmargin stock during the initial over-the-counter trading period prior to the stock becoming registered (listed) on a national securities exchange would be subject to this part. The Board replied that, until such stock qualifies as margin stock, this would not be applicable to such a loan.

(b) The Board has now been asked what the position of the lending bank would be under this part if, after the date on which the stock should become registered, such bank continued to hold a loan of the kind just described. It is assumed that the loan was in an amount greater than the maximum loan value for the collateral specified in this part.

(c) If the stock should become registered, the loan would then be for the purpose of purchasing or carrying a margin stock, and, if secured directly or indirectly by any margin stock, would be subject to this part as from the date the stock was registered. Under this part, this does not mean that the bank would have to obtain reduction of the loan in order to reduce it to an amount no more than the specified maximum loan value. It does mean, however, that so long as the loan balance exceeded the specified maximum loan value, the bank could not permit any withdrawals or substitutions of collateral that would increase such excess; nor could the bank increase the amount of the loan balance unless there was provided additional collateral having a maximum loan value at least equal to the amount of the increase. In other words, as from the date the stock should become a margin stock, the loan would be subject to this part in exactly the same way, for example, as a loan subject to this part that became under-margined because of a decline in the current market value of the loan collateral or because of a decrease by the Board in the maximum loan value of the loan collateral.

**§ 221.109 Loan to open-end investment company.**

In response to a question regarding a possible loan by a bank to an open-end investment company that customarily purchases stocks registered on a national securities exchange, the Board stated that in view of the general nature and operations of such a company, any loan by a bank to such a company should be presumed to be subject to this part as a loan for the purpose of purchasing or carrying margin stock. This would not be altered by the fact that the open-end company had used, or proposed to use, its own funds or proceeds of the loan to redeem some of its own shares, since mere application of the proceeds of a loan to some other use cannot prevent the ultimate purpose of a loan from being to purchase or carry registered stocks.

**§ 221.110 Questions arising under this part.**

(a) This part governs ''any purpose credit'' extended by a lender ''secured directly or indirectly by margin stock'' and defines ''purpose credit'' as ''any credit for the purpose, whether immediate, incidental, or ultimate, of buying or carrying margin stock, '' with certain exceptions, and provides that the maximum loan value of such margin stock shall be a fixed percentage ''of its current market value.''

(b) The Board of Governors has had occasion to consider the application of the language in paragraph (a) of this section to the two following questions:

(1) *Loan secured by stock.* First, is a loan to purchase or carry margin stock subject to this part where made in unsecured form, if margin stock is subsequently deposited as security with the lender, and surrounding circumstances indicate that the parties originally contemplated that the loan should be so secured? The Board answered that in a case of this kind, the loan would be subject to this part, for the following reasons:

(i) The Board has long held, in the closely related purpose area, that the original purpose of a loan should not be determined upon a narrow analysis of the technical circumstances under which a loan is made. Instead, the fundamental purpose of the loan is considered to be controlling. Indeed, ''the fact that a loan made on the borrower's signature only, for example, becomes secured by registered stock shortly after the disbursement of the loan'' affords reasonable grounds for questioning whether the bank was entitled to rely upon the borrower's statement as to the purpose of the loan. 1953 Fed. Res. Bull. 951 (*See,* § 221.106).

(ii) Where security is involved, standards of interpretation should be equally searching. If, for example, the original agreement between borrower and lender contemplated that the loan should be secured by margin stock, and such stock is in fact delivered to the bank when available, the transaction must be regarded as fundamentally a secured loan. This view is strengthened by the fact that this part applies to a loan ''secured directly or indirectly by margin stock.''

(2) *Loan to acquire controlling shares.* (i) The second question is whether this part governs a margin stock-secured loan made for the business purpose of purchasing a controlling interest in a corporation, or whether such a loan would be exempt on the ground that this part is directed solely toward purchases of stock for speculative or investment purposes. The Board answered that a margin stock-secured loan for the purpose of purchasing or carrying margin stock is subject to this part, regardless of the reason for which the purchase is made.

(ii) The answer is required, in the Board's view, since the language of this part is explicitly inclusive, covering ''any purpose credit, secured directly or indirectly by margin stock.'' Moreover, the withdrawal in 1945 of the original section 2(e) of this part, which exempted ''any loan for the purpose of purchasing a stock from or through a person who is not a member of a national securities exchange . . .'' plainly implies that transactions of the sort described are now subject to the general prohibition of § 221.3(a).

**§ 221.111 Contribution to joint venture as extension of credit when the contribution is disproportionate to the contributor's share in the venture's profits or losses.**

(a) The Board considered the question whether a joint venture, structured so that the amount of capital contribution to the venture would be disproportionate to the right of participation in profits or losses, constitutes an ''extension of credit'' for the purpose of this part.

(b) An individual and a corporation plan to establish a joint venture to engage in the business of buying and selling securities, including margin stock. The individual would contribute 20 percent of the capital and receive 80 percent of the profits or losses; the corporate share would be the reverse. In computing profits or losses, each participant would first receive interest at the rate of 8 percent on his respective capital contribution. Although purchases and sales would be mutually agreed upon, the corporation could liquidate the joint portfolio if the individual's share of the losses equaled or exceeded his 20 percent contribution to the venture. The corporation would hold the securities, and upon termination of the venture, the assets would first be applied to repayment of capital contributions.

(c) In general, the relationship of joint venture is created when two or more persons combine their money, property, or time in the conduct of some particular line of trade or some particular business and agree to share jointly, or in proportion to capital contributed, the profits and losses of the undertaking.

(d) The incidents of the joint venture described in paragraph (b) of this section, however, closely parallel those of an extension of margin credit, with the corporation as lender and the individual as borrower. The corporation supplies 80 percent of the purchase price of securities in exchange for a net return of 8 percent of the amount advanced plus 20 percent of any gain. Like a lender of securities credit, the corporation is insulated against loss by retaining the right to liquidate the collateral before the securities decline in price below the amount of its contribution. Conversely, the individual—like a customer who borrows to purchase securities—puts up only 20 percent of their cost, is entitled to the principal portion of any appreciation in their value, bears the principal risk of loss should that value decline, and does not stand to gain or lose except through a change in value of the securities purchased.

(e) The Board is of the opinion that where the right of an individual to share in profits and losses of such a joint venture is disproportionate to his contribution to the venture:

(1) The joint venture involves an extension of credit by the corporation to the individual;

(2) The extension of credit is to purchase or carry margin stock, and is collateralized by such margin stock; and

(3) If the corporation is not a broker or dealer subject to Regulation T (12 CFR part 220), the credit is of the kind described by § 221.3(a).

**§ 221.112 Loans by bank in capacity as trustee.**

(a) The Board's advice has been requested whether a bank's activities in connection with the administration of an employees' savings plan are subject to this part.

(b) Under the plan, any regular, full-time employee may participate by

authorizing the sponsoring company to deduct a percentage of his salary and wages and transmit the same to the bank as trustee. Voluntary contributions by the company are allocated among the participants. A participant may direct that funds held for him be invested by the trustee in insurance, annuity contracts, Series E Bonds, or in one or more of three specified securities which are listed on a stock exchange. Loans to purchase the stocks may be made to participants from funds of the trust, subject to approval of the administrative committee, which is composed of five participants, and of the trustee. The bank's right to approve is said to be restricted to the mechanics of making the loan, the purpose being to avoid cumbersome procedures.

(c) Loans are secured by the credit balance of the borrowing participants in the savings fund, including stock, but excluding (in practice) insurance and annuity contracts and government securities. Additional stocks may be, but, in practice, have not been pledged as collateral for loans. Loans are not made, under the plan, from bank funds, and participants do not borrow from the bank upon assignment of the participants' accounts in the trust.

(d) It is urged that loans under the plan are not subject to this part because a loan should not be considered as having been made by a bank where the bank acts solely in its capacity of trustee, without exercise of any discretion.

(e) The Board reviewed this question upon at least one other occasion, and full consideration has again been given to the matter. After considering the arguments on both sides, the Board has reaffirmed its earlier view that, in conformity with an interpretation not published in the Code of Federal Regulations which was published at page 874 of the 1946 Federal Reserve Bulletin (*See* 12 CFR 261.10(f) for information on how to obtain Board publications.), this part applies to the activities of a bank when it is acting in its capacity as trustee. Although the bank in that case had at best a limited discretion with respect to loans made by it in its capacity as trustee, the Board concluded that this fact did not affect the application of the regulation to such loans.

**§ 221.113 Loan which is secured indirectly by stock.**

(a) A question has been presented to the Board as to whether a loan by a bank to a mutual investment fund is ''secured * * * indirectly by margin stock'' within the meaning of § 221.(3)(a), so that the loan should be treated as subject to this part.

(b) Briefly, the facts are as follows. Fund X, an open-end investment company, entered into a loan agreement with Bank Y, which was (and still is) custodian of the securities which comprise the portfolio of Fund X. The agreement includes the following terms, which are material to the question before the Board:

(1) Fund X agrees to have an ''asset coverage'' (as defined in the agreements) of 400 percent of all its borrowings, including the proposed borrowing, at the time when it takes down any part of the loan.

(2) Fund X agrees to maintain an ''asset coverage'' of at least 300 percent of its borrowings at all times.

(3) Fund X agrees not to amend its custody agreement with Bank Y, or to substitute another custodian without Bank Y's consent.

(4) Fund X agrees not to mortgage, pledge, or otherwise encumber any of its assets elsewhere than with Bank Y.

(c) In § 221.109 the Board stated that because of ''the general nature and operations of such a company'', any ''loan by a bank to an open-end investment company that customarily purchases margin stock * * * should be presumed to be subject to this part as a loan for the purpose of purchasing or carrying margin stock'' (purpose credit). The Board's interpretation went on to say that: ''this would not be altered by the fact that the open-end company had used, or proposed to use, its own funds or proceeds of the loan to redeem some of its own shares * * *.''

(d) Accordingly, the loan by Bank Y to Fund X was and is a ''purpose credit''. However, a loan by a bank is not subject to this part unless: it is a purpose credit; and it is ''secured directly or indirectly by margin stock''. In the present case, the loan is not ''secured directly'' by stock in the ordinary sense, since the portfolio of Fund X is not pledged to secure the credit from Bank Y. But the word ''indirectly'' must signify some form of security arrangement other than the ''direct'' security which arises from the ordinary ''transaction that gives recourse against a particular chattel or land or against a third party on an obligation'' described in the American Law Institute's Restatement of the Law of Security, page 1. Otherwise the word ''indirectly'' would be superfluous, and a regulation, like a statute, must be construed if possible to give meaning to every word.

(e) The Board has indicated its view that any arrangement under which margin stock is more readily available as security to the lending bank than to other creditors of the borrower may amount to indirect security within the meaning of this part. In an interpretation published at § 221.110 it stated: ''The Board has long held, in the * * * purpose area, that the original purpose of a loan should not be determined upon a narrow analysis of the technical circumstances under which a loan is made * * * . Where security is involved, standards of interpretation should be equally searching.'' In its pamphlet issued for the benefit and guidance of banks and bank examiners, entitled ''Questions and Answers Illustrating Application of Regulation U'', the Board said: ''In determining whether a loan is ''indirectly'' secured, it should be borne in mind that the reason the Board has thus far refrained * * * from regulating loans not secured by stock has been to simplify operations under the regulation. This objective of simplifying operations does not apply to loans in which arrangements are made to retain the substance of stock collateral while sacrificing only the form''.

(f) A wide variety of arrangements as to collateral can be made between bank and borrower which will serve, to some extent, to protect the interest of the bank in seeing that the loan is repaid, without giving the bank a conventional direct ''security'' interest in the collateral. Among such arrangements which have come to the Board's attention are the following:

(1) The borrower may deposit margin stock in the custody of the bank. An arrangement of this kind may not, it is true, place the bank in the position of a secured creditor in case of bankruptcy, or even of conflicting claims, but it is likely effectively to strengthen the bank's position. The definition of *indirectly secured* in § 221.2, which provides that a loan is not indirectly secured if the lender ''holds the margin stock only in the capacity of custodian, depositary or trustee, or under similar circumstances, and, in good faith has not relied upon the margin stock as collateral,'' does not exempt a deposit of this kind from the impact of the regulation unless it is clear that the bank ''has not relied'' upon the margin stock deposited with it.

(2) A borrower may not deposit his margin stock with the bank, but agree not to pledge or encumber his assets elsewhere while the loan is outstanding. Such an agreement may be difficult to police, yet it serves to some extent to protect the interest of the bank if only because the future credit standing and business reputation of the borrower will depend upon his keeping his word. If

the assets covered by such an agreement include margin stock, then, the credit is ''indirectly secured'' by the margin stock within the meaning of this part.

(3) The borrower may deposit margin stock with a third party who agrees to hold the stock until the loan has been paid off. Here, even though the parties may purport to provide that the stock is not ''security'' for the loan (for example, by agreeing that the stock may not be sold and the proceeds applied to the debt if the borrower fails to pay), the mere fact that the stock is out of the borrower's control for the duration of the loan serves to some extent to protect the bank.

(g) The three instances described in paragraph (f) of this section are merely illustrative. Other methods, or combinations of methods, may serve a similar purpose. The conclusion that any given arrangement makes a credit ''indirectly secured'' by margin stock may, but need not, be reinforced by facts such as that the stock in question was purchased with proceeds of the loan, that the lender suggests or insists upon the arrangement, or that the loan would probably be subject to criticism by supervisory authorities were it not for the protective arrangement.

(h) Accordingly, the Board concludes that the loan by Bank Y to Fund X is indirectly secured by the portfolio of the fund and must be treated by the bank as a regulated loan.

**§ 221.114 Bank loans to purchase stock of American Telephone and Telegraph Company under Employees' Stock Plan.**

(a) The Board of Governors interpreted this part in connection with proposed loans by a bank to persons who are purchasing shares of stock of American Telephone and Telegraph Company pursuant to its Employees' Stock Plan.

(b) According to the current offering under the Plan, an employee of the AT&T system may purchase shares through regular deductions from his pay over a period of 24 months. At the end of that period, a certificate for the appropriate number of shares will be issued to the participating employee by AT&T. Each employee is entitled to purchase, as a maximum, shares that will cost him approximately three-fourths of his annual base pay. Since the program extends over two years, it follows that the payroll deductions for this purpose may be in the neighborhood of 38 percent of base pay and a larger percentage of ''take-home pay.'' Deductions of this magnitude are in excess of the saving rate of many employees.

(c) Certain AT&T employees, who wish to take advantage of the current offering under the Plan, are the owners of shares of AT&T stock that they purchased under previous offerings. A bank proposed to receive such stock as collateral for a ''living expenses'' loan that will be advanced to the employee in monthly installments over the 24-month period, each installment being in the amount of the employee's monthly payroll deduction under the Plan. The aggregate amount of the advances over the 24-month period would be substantially greater than the maximum loan value of the collateral as prescribed in § 221.7 (the Supplement).

(d) In the opinion of the Board of Governors, a loan of the kind described would violate this part if it exceeded the maximum loan value of the collateral. The regulation applies to any margin stock-secured loan for the purpose of purchasing or carrying margin stock (§ 221.3(a)). Although the proposed loan would purport to be for living expenses, it seems quite clear, in view of the relationship of the loan to the Employees' Stock Plan, that its actual purpose would be to enable the borrower to purchase AT&T stock, which is margin stock. At the end of the 24-month period the borrower would acquire a certain number of shares of that stock and would be indebted to the lending bank in an amount approximately equal to the amount he would pay for such shares. In these circumstances, the loan by the bank must be regarded as a loan ''for the purpose of purchasing'' the stock, and therefore it is subject to the limitations prescribed by this part. This conclusion follows from the provisions of this part, and it may also be observed that a contrary conclusion could largely defeat the basic purpose of the margin regulations.

(e) Accordingly, the Board concluded that a loan of the kind described may not be made in an amount exceeding the maximum loan value of the collateral, as prescribed by the current § 221.7 (the Supplement).

**§ 221.115 Accepting a purpose statement through the mail without benefit of face-to-face interview.**

(a) The Board has been asked whether the acceptance of a purpose statement submitted through the mail by a lender subject to the provisions of this part will meet the good faith requirement of § 221.3(c). Section 221.3(c) states that in connection with any credit secured by collateral which includes any margin stock, a nonbank lender must obtain a purpose statement executed by the borrower and accepted by the lender in good faith. Such acceptance requires that the lender be alert to the circumstances surrounding the credit and if further information suggests inquiry, he must investigate and be satisfied that the statement is truthful.

(b) The lender is a subsidiary of a holding company which also has another subsidiary which serves as underwriter and investment advisor to various mutual funds. The sole business of the lender will be to make ''non-purpose'' consumer loans to shareholders of the mutual funds, such loans to be collateralized by the fund shares. Most mutual funds shares are margin stock for purposes of this part. Solicitation and acceptance of these consumer loans will be done principally through the mail and the lender wishes to obtain the required purpose statement by mail rather than by a face-to-face interview. Personal interviews are not practicable for the lender because shareholders of the funds are scattered throughout the country. In order to provide the same safeguards inherent in face-to-face interviews, the lender has developed certain procedures designed to satisfy the good faith acceptance requirement of this part.

(c) The purpose statement will be supplemented with several additional questions relevant to the prospective borrower's investment activities such as purchases of any security within the last 6 months, dollar amount, and obligations to purchase or pay for previous purchases; present plans to purchase securities in the near future, participations in securities purchase plans, list of unpaid debts, and present income level. Some questions have been modified to facilitate understanding but no questions have been deleted. If additional inquiry is indicated by the answers on the form, a loan officer of the lender will interview the borrower by telephone to make sure the loan is ''non-purpose''. Whenever the loan exceeds the ''maximum loan value'' of the collateral for a regulated loan, a telephone interview will be done as a matter of course.

(d) One of the stated purposes of Regulation X (12 CFR part 224) was to prevent the infusion of unregulated credit into the securities markets by borrowers falsely certifying the purpose of a loan. The Board is of the view that the existence of Regulation X (12 CFR part 224), which makes the borrower liable for willful violations of the margin regulations, will allow a lender subject to this part to meet the good faith acceptance requirement of § 221.3(c) without a face-to-face interview if the lender adopts a program, such as the one described in

paragraph (c) of this section, which requires additional detailed information from the borrower and proper procedures are instituted to verify the truth of the information received. Lenders intending to embark on a similar program should discuss proposed plans with their district Federal Reserve Bank. Lenders may have existing or future loans with the prospective customers which could complicate the efforts to determine the true purpose of the loan.

**§ 221.116 Bank loans to replenish working capital used to purchase mutual fund shares.**

(a) In a situation considered by the Board of Governors, a business concern (X) proposed to purchase mutual fund shares, from time to time, with proceeds from its accounts receivable, then pledge the shares with a bank in order to secure working capital. The bank was prepared to lend amounts equal to 70 percent of the current value of the shares as they were purchased by X. If the loans were subject to this part, only 50 percent of the current market value of the shares could be lent.

(b) The immediate purpose of the loans would be to replenish X's working capital. However, as time went on, X would be acquiring mutual fund shares at a cost that would exceed the net earnings it would normally have accumulated, and would become indebted to the lending bank in an amount approximately 70 percent of the prices of said shares.

(c) The Board held that the loans were for the purpose of purchasing the shares, and therefore subject to the limitations prescribed by this part. As pointed out in § 221.114 with respect to a similar program for putting a high proportion of cash income into stock, the borrowing against the margin stock to meet needs for which the cash would otherwise have been required, a contrary conclusion could largely defeat the basic purpose of the margin regulations.

(d) Also considered was an alternative proposal under which X would deposit proceeds from accounts receivable in a time account for 1 year, before using those funds to purchase mutual fund shares. The Board held that this procedure would not change the situation in any significant way. Once the arrangement was established, the proceeds would be flowing into the time account at the same time that similar amounts were released to purchase the shares, and over any extended period of time the result would be the same. Accordingly, the Board concluded that bank loans made under the alternative proposal would similarly be subject to this part.

**§ 221.117 When bank in ''good faith'' has not relied on stock as collateral.**

(a) The Board has received questions regarding the circumstances in which an extension or maintenance of credit will not be deemed to be ''indirectly secured'' by stock as indicated by the phrase, ''if the lender, in good faith, has not relied upon the margin stock as collateral,'' contained in paragraph (2)(iv) of the definition of *indirectly secured* in § 221.2.

(b) In response, the Board noted that in amending this portion of the regulation in 1968 it was indicated that one of the purposes of the change was to make clear that the definition of *indirectly secured* does not apply to certain routine negative covenants in loan agreements. Also, while the question of whether or not a bank has relied upon particular stock as collateral is necessarily a question of fact to be determined in each case in the light of all relevant circumstances, some indication that the bank had not relied upon stock as collateral would seem to be afforded by such circumstances as the fact that:

(1) The bank had obtained a reasonably current financial statement of the borrower and this statement could reasonably support the loan; and

(2) The loan was not payable on demand or because of fluctuations in market value of the stock, but instead was payable on one or more fixed maturities which were typical of maturities applied by the bank to loans otherwise similar except for not involving any possible question of stock collateral.

**§ 221.118 Bank arranging for extension of credit by corporation.**

(a) The Board considered the questions whether:

(1) The guaranty by a corporation of an ''unsecured'' bank loan to exercise an option to purchase stock of the corporation is an ''extension of credit'' for the purpose of this part;

(2) Such a guaranty is given ''in the ordinary course of business'' of the corporation, as defined in § 221.2; and

(3) The bank involved took part in arranging for such credit on better terms than it could extend under the provisions of this part.

(b) The Board understood that any officer or employee included under the corporation's stock option plan who wished to exercise his option could obtain a loan for the purchase price of the stock by executing an unsecured note to the bank. The corporation would issue to the bank a guaranty of the loan and hold the purchased shares as collateral to secure it against loss on the guaranty. Stock of the corporation is registered on a national securities exchange and therefore qualifies as ''margin stock'' under this part.

(c) A nonbank lender is subject to the registration and other requirements of this part if, in the ordinary course of his business, he extends credit on collateral that includes any margin stock in the amount of $200,000 or more in any calendar quarter, or has such credit outstanding in any calendar quarter in the amount of $500,000 or more. The Board understood that the corporation in question had sufficient guaranties outstanding during the applicable calendar quarter to meet the dollar thresholds for registration.

(d) In the Board's judgment a person who guarantees a loan, and thereby becomes liable for the amount of the loan in the event the borrower should default, is lending his credit to the borrower. In the circumstances described, such a lending of credit must be considered an ''extension of credit'' under this part in order to prevent circumvention of the regulation's limitation on the amount of credit that can be extended on the security of margin stock.

(e) Under § 221.2, the term *in the ordinary course of business means* ''occurring or reasonably expected to occur in carrying out or furthering any business purpose. * * *'' In general, stock option plans are designed to provide a company's employees with a proprietary interest in the company in the form of ownership of the company's stock. Such plans increase the company's ability to attract and retain able personnel and, accordingly, promote the interest of the company and its stockholders, while at the same time providing the company's employees with additional incentive to work toward the company's future success. An arrangement whereby participating employees may finance the exercise of their options through an unsecured bank loan guaranteed by the company, thereby facilitating the employees' acquisition of company stock, is likewise designed to promote the company's interest and is, therefore, in furtherance of a business purpose.

(f) For the reasons indicated, the Board concluded that under the circumstances described a guaranty by the corporation constitutes credit extended in the ordinary course of business under this part, that the corporation is required to register pursuant to § 221.3(b), and that such guaranties may not be given in excess of

the maximum loan value of the collateral pledged to secure the guaranty.

(g) Section 221.3(a)(3) provides that ''no lender may arrange for the extension or maintenance of any purpose credit, except upon the same terms and conditions on which the lender itself may extend or maintain purpose credit under this part''. Since the Board concluded that the giving of a guaranty by the corporation to secure the loan described above constitutes an extension of credit, and since the use of a guaranty in the manner described could not be effectuated without the concurrence of the bank involved, the Board further concluded that the bank took part in ''arranging'' for the extension of credit in excess of the maximum loan value of the margin stock pledged to secure the guaranties.

**§ 221.119 Applicability of plan-lender provisions to financing of stock options and stock purchase rights qualified or restricted under Internal Revenue Code.**

(a) The Board has been asked whether the plan-lender provisions of § 221.4(a) and (b) were intended to apply to the financing of stock options restricted or qualified under the Internal Revenue Code where such options or the option plan do not provide for such financing.

(b) It is the Board's experience that in some nonqualified plans, particularly stock purchase plans, the credit arrangement is distinct from the plan. So long as the credit extended, and particularly, the character of the plan-lender, conforms with the requirements of the regulation, the fact that option and credit are provided for in separate documents is immaterial. It should be emphasized that the Board does not express any view on the preferability of qualified as opposed to nonqualified options; its role is merely to prevent excessive credit in this area.

(c) Section 221.4(a) provides that a plan-lender may include a wholly-owned subsidiary of the issuer of the collateral (taking as a whole, corporate groups including subsidiaries and affiliates). This clarifies the Board's intent that, to qualify for special treatment under that section, the lender must stand in a special employer-employee relationship with the borrower, and a special relationship of issuer with regard to the collateral. The fact that the Board, for convenience and practical reasons, permitted the employing corporation to act through a subsidiary or other entity should not be interpreted to mean the Board intended the lender to be other than an entity whose overriding interests were coextensive with the issuer. An independent corporation, with independent interests was never intended, regardless of form, to be at the base of exempt stock-plan lending.

**§ 221.120 Allocation of stock collateral to purpose and nonpurpose credits to same customer.**

(a) A bank proposes to extend two credits (Credits A and B) to its customer. Although the two credits are proposed to be extended at the same time, each would be evidenced by a separate agreement. Credit A would be extended for the purpose of providing the customer with working capital (nonpurpose credit), collateralized by margin stock. Credit B would be extended for the purpose of purchasing or carrying margin stock (purpose credit), without collateral or on collateral other than stock.

(b) This part allows a bank to extend purpose and nonpurpose credits simultaneously or successively to the same customer. This rule is expressed in § 221.3(d)(4) which provides in substance that for any nonpurpose credit to the same customer, the lender shall in good faith require as much collateral not already identified to the customer's purpose credit as the lender would require if it held neither the purpose loan nor the identified collateral. This rule in § 221.3(d)(4) also takes into account that the lender would not necessarily be required to hold collateral for the nonpurpose credit if, consistent with good faith banking practices, it would normally make this kind of nonpurpose loan without collateral.

(c) The Board views § 221.3(d)(4), when read in conjunction with § 221.3(c) and (f), as requiring that whenever a lender extends two credits to the same customer, one a purpose credit and the other nonpurpose, any margin stock collateral must first be identified with and attributed to the purpose loan by taking into account the maximum loan value of such collateral as prescribed in § 221.7 (the Supplement).

(d) The Board is further of the opinion that under the foregoing circumstances Credit B would be indirectly secured by stock, despite the fact that there would be separate loan agreements for both credits. This conclusion flows from the circumstance that the lender would hold in its possession stock collateral to which it would have access with respect to Credit B, despite any ostensible allocation of such collateral to Credit A.

**§ 221.121 Extension of credit in certain stock option and stock purchase plans.**

Questions have been raised as to whether certain stock option and stock purchase plans involve extensions of credit subject to this part when the participant is free to cancel his participation at any time prior to full payment, but in the event of cancellation the participant remains liable for damages. It thus appears that the participant has the opportunity to gain and bears the risk of loss from the time the transaction is executed and payment is deferred. In some cases brought to the Board's attention damages are related to the market price of the stock, but in others, there may be no such relationship. In either of these circumstances, it is the Board's view that such plans involve extensions of credit. Accordingly, where the security being purchased is a margin security and the credit is secured, directly or indirectly, by any margin security, the creditor must register and the credit must conform with either the regular margin requirements of § 221.3(a) or the special ''plan-lender'' provisions set forth in § 221.4, whichever is applicable. This assumes, of course, that the amount of credit extended is such that the creditor is subject to the registration requirements of § 221.3(b).

**§ 221.122 Applicability of margin requirements to credit in connection with Insurance Premium Funding Programs.**

(a) The Board has been asked numerous questions regarding purpose credit in connection with insurance premium funding programs. The inquiries are included in a set of guidelines in the format of questions and answers. (The guidelines are available pursuant to the Board's Rules Regarding Availability of Information, 12 CFR part 261.) A glossary of terms customarily used in connection with insurance premium funding credit activities is included in the guidelines. Under a typical insurance premium funding program, a borrower acquires mutual fund shares for cash, or takes fund shares which he already owns, and then uses the loan value (currently 50 percent as set by the Board) to buy insurance. Usually, a funding company (the issuer) will sell both the fund shares and the insurance through either independent broker/dealers or subsidiaries or affiliates of the issuer. A typical plan may run for 10 or 15 years with annual insurance premiums due. To illustrate, assuming an annual insurance premium of $300, the participant is required to put up mutual fund shares equivalent to 250 percent of the premium or $600 ($600 x 50 percent

loan value equals $300 the amount of the insurance premium which is also the amount of the credit extended).

(b) The guidelines referenced in paragraph (a) of this section also:

(1) Clarify an earlier 1969 Board interpretation to show that the public offering price of mutual fund shares (which includes the front load, or sales commission) may be used as a measure of their current market value when the shares serve as collateral on a purpose credit throughout the day of the purchase of the fund shares; and

(2) Relax a 1965 Board position in connection with accepting purpose statements by mail.

(c) It is the Board's view that when it is clearly established that a purpose statement supports a purpose credit then such statement executed by the borrower may be accepted by mail, provided it is received and also executed by the lender before the credit is extended.

**§ 221.123 Combined credit for exercising employee stock options and paying income taxes incurred as a result of such exercise.**

(a) Section 221.4(a) and (b), which provides special treatment for credit extended under employee stock option plans, was designed to encourage their use in recognition of their value in giving an employee a proprietary interest in the business. Taking a position that might discourage the exercise of options because of tax complications would conflict with the purpose of § 221.4(a) and (b).

(b) Accordingly, the Board has concluded that the combined loans for the exercise of the option and the payment of the taxes in connection therewith under plans complying with § 221.4(a)(2) may be regarded as *purpose credit* within the meaning of § 221.2.

**§ 221.124 Purchase of debt securities to finance corporate takeovers.**

(a) Petitions have been filed with the Board raising questions as to whether the margin requirements in this part apply to two types of corporate acquisitions in which debt securities are issued to finance the acquisition of margin stock of a target company.

(b) In the first situation, the acquiring company, Company A, controls a shell corporation that would make a tender offer for the stock of Company B, which is margin stock (as defined in § 221.2). The shell corporation has virtually no operations, has no significant business function other than to acquire and hold the stock of Company B, and has substantially no assets other than the margin stock to be acquired. To finance the tender offer, the shell corporation would issue debt securities which, by their terms, would be unsecured. If the tender offer is successful, the shell corporation would seek to merge with Company B. However, the tender offer seeks to acquire fewer shares of Company B than is necessary under state law to effect a short form merger with Company B, which could be consummated without the approval of shareholders or the board of directors of Company B.

(c) The purchase of the debt securities issued by the shell corporation to finance the acquisition clearly involves purpose credit (as defined in § 221.2). In addition, such debt securities would be purchased only by sophisticated investors in very large minimum denominations, so that the purchasers may be lenders for purposes of this part. *See* § 221.3(b). Since the debt securities contain no direct security agreement involving the margin stock, applicability of the lending restrictions of this part turns on whether the arrangement constitutes an extension of credit that is secured indirectly by margin stock.

(d) As the Board has recognized, indirect security can encompass a wide variety of arrangements between lenders and borrowers with respect to margin stock collateral that serve to protect the lenders' interest in assuring that a credit is repaid where the lenders do not have a conventional direct security interest in the collateral. *See* § 221.124. However, credit is not ''indirectly secured'' by margin stock if the lender in good faith has not relied on the margin stock as collateral extending or maintaining credit. *See* § 221.2.

(e) The Board is of the view that, in the situation described in paragraph (b) of this section, the debt securities would be presumed to be indirectly secured by the margin stock to be acquired by the shell acquisition vehicle. The staff has previously expressed the view that nominally unsecured credit extended to an investment company, a substantial portion of whose assets consist of margin stock, is indirectly secured by the margin stock. *See* Federal Reserve Regulatory Service 5–917.12. (*See* 12 CFR 261.10(f) for information on how to obtain Board publications.) This opinion notes that the investment company has substantially no assets other than margin stock to support indebtedness and thus credit could not be extended to such a company in good faith without reliance on the margin stock as collateral.

(f) The Board believes that this rationale applies to the debt securities issued by the shell corporation described in paragraph (b) of this section. At the time the debt securities are issued, the shell corporation has substantially no assets to support the credit other than the margin stock that it has acquired or intends to acquire and has no significant business function other than to hold the stock of the target company in order to facilitate the acquisition. Moreover, it is possible that the shell may hold the margin stock for a significant and indefinite period of time, if defensive measures by the target prevent consummation of the acquisition. Because of the difficulty in predicting the outcome of a contested takeover at the time that credit is committed to the shell corporation, the Board believes that the purchasers of the debt securities could not, in good faith, lend without reliance on the margin stock as collateral. The presumption that the debt securities are indirectly secured by margin stock would not apply if there is specific evidence that lenders could in good faith rely on assets other than margin stock as collateral, such as a guaranty of the debt securities by the shell corporation's parent company or another company that has substantial non-margin stock assets or cash flow. This presumption would also not apply if there is a merger agreement between the acquiring and target companies entered into at the time the commitment is made to purchase the debt securities or in any event before loan funds are advanced. In addition, the presumption would not apply if the obligation of the purchasers of the debt securities to advance funds to the shell corporation is contingent on the shell's acquisition of the minimum number of shares necessary under applicable state law to effect a merger between the acquiring and target companies without the approval of either the shareholders or directors of the target company. In these two situations where the merger will take place promptly, the Board believes the lenders could reasonably be presumed to be relying on the assets of the target for repayment.

(g) In addition, the Board is of the view that the debt securities described in paragraph (b) of this section are indirectly secured by margin stock because there is a practical restriction on the ability of the shell corporation to dispose of the margin stock of the target company. Indirectly secured is defined in § 221.2 to include any arrangement under which the customer's right or ability to sell, pledge, or otherwise dispose of margin stock owned by the customer is in any way restricted while the credit remains outstanding. The purchasers of the debt securities issued by a shell corporation to finance a

takeover attempt clearly understand that the shell corporation intends to acquire the margin stock of the target company in order to effect the acquisition of that company. This understanding represents a practical restriction on the ability of the shell corporation to dispose of the target's margin stock and to acquire other assets with the proceeds of the credit.

(h) In the second situation, Company C, an operating company with substantial assets or cash flow, seeks to acquire Company D, which is significantly larger than Company C. Company C establishes a shell corporation that together with Company C makes a tender offer for the shares of Company D, which is margin stock. To finance the tender offer, the shell corporation would obtain a bank loan that complies with the margin lending restrictions of this part and Company C would issue debt securities that would not be directly secured by any margin stock. The Board is of the opinion that these debt securities should not be presumed to be indirectly secured by the margin stock of Company D, since, as an operating business, Company C has substantial assets or cash flow without regard to the margin stock of Company D. Any presumption would not be appropriate because the purchasers of the debt securities may be relying on assets other than margin stock of Company D for repayment of the credit.

**§ 221.125 Credit to brokers and dealers.**

(a) The National Securities Markets Improvement Act of 1996 (Pub. L. 104–290, 110 Stat. 3416) restricts the Board's margin authority by repealing section 8(a) of the Securities Exchange Act of 1934 (the Exchange Act) and amending section 7 of the Exchange Act (15 U.S.C. 78g) to exclude the borrowing by a member of a national securities exchange or a registered broker or dealer ''a substantial portion of whose business consists of transactions with persons other than brokers or dealers'' and borrowing by a member of a national securities exchange or a registered broker or dealer to finance its activities as a market maker or an underwriter. Notwithstanding this exclusion, the Board may impose such rules and regulations if it determines they are ''necessary or appropriate in the public interest or for the protection of investors.''

(b) The Board has not found that it is necessary or appropriate in the public interest or for the protection of investors to impose rules and regulations regarding loans to brokers and dealers covered by the National Securities Markets Improvement Act of 1996.

## PART 224—BORROWERS OF SECURITIES CREDIT (REGULATION X)

7. The authority citation for part 224 is revised to read as follows:

**Authority:** 15 U.S.C. 78g.

**§ 224.1 [Amended]**

8. Section 224.1 is amended as follows:

a. Remove ''G,'' and ''207,'' from the last sentence in paragraph (a).

b. Remove ''G,'' from paragraph (b)(1).

**§ 224.2 [Amended]**

9. Section 224.2 is amended by removing ''G,'' from the introductory text.

10. Section 224.3 is revised to read as follows:

**§ 224.3 Margin regulations to be applied by nonexempted borrowers.**

(a) *Credit transactions outside the United States.* No borrower shall obtain purpose credit from outside the United States unless it conforms to the following margin regulations:

(1) Regulation T (12 CFR part 220) if the credit is obtained from a foreign branch of a broker-dealer;

(2) Regulation U (12 CFR part 221), as it applies to banks, if the credit is obtained from a foreign branch of a bank, except for the requirement of a purpose statement (12 CFR 221.3(c)(1)(i) and (c)(2)(i)); and

(3) Regulation U (12 CFR part 221), as it applies to nonbank lenders, if the credit is obtained from any other lender outside the United States, except for the requirement of a purpose statement (12 CFR 221.3(c)(1)(ii) and (c)(2)(ii)).

(b) *Credit transactions within the United States.* Any borrower who willfully causes credit to be extended in contravention of Regulations T and U (12 CFR parts 220 and 221), and who, therefore, is not exempted by § 224.1(b)(1), must conform the credit to the margin regulation that applies to the lender.

## PART 265—RULES REGARDING DELEGATION OF AUTHORITY

11. The authority citation for part 265 continues to read as follows:

**Authority:** 12 U.S.C. 248(i) and (k).

12. Section 265.11(f) is revised to read as follows:

**§ 265.11 Functions delegated to Federal Reserve Banks.**

* * * * *

(f) *Securities.* To approve applications by a registered lender for termination of the registration under § 221.3(b)(2) of Regulation U (12 CFR 221.3(b)(2)).

* * * * *

By order of the Board of Governors of the Federal Reserve System, January 8, 1998.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 98–871 Filed 1–15–98; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

## 12 CFR Parts 220, 221 and 224

**[Regulations T, U and X; Docket No. R–0995]**

## Securities Credit Transactions

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Advance notice of proposed rulemaking and request for comment.

**SUMMARY:** In 1995 and 1996, the Board proposed three sets of amendments to its securities credit or margin regulations (Regulations G, T and U). These amendments were proposed in part based on a review of the margin regulations the Board is conducting pursuant to its internal policy of periodically reviewing its regulations and section 303 of the Riegle Community Redevelopment and Regulatory Improvement Act of 1994 and in part on statutory amendments to the Board's margin authority under the Securities Exchange Act of 1934 (the '34 Act) contained in the National Securities Markets Improvement Act of 1996. In a separate document published elsewhere in today's **Federal Register**, the Board is adopting final amendments to Regulations G, T and U in response to the three proposals. The final amendments include the extension of Regulation U to cover lenders formerly subject to Regulation G and the elimination of Regulation G.

In the course of the comment process for the Board's 1995–1996 proposals, commenters raised a number of issues not addressed by the Board in the proposals. In order to complete the periodic review of its margin regulations, the Board is publishing this advance notice and request for comment for Regulations T, U and X. After reviewing the comments, the Board may issue specific proposed amendments for public comment.

**DATES:** Comments should be received by April 1, 1998.

**ADDRESSES:** Comments should refer to Docket No. R–0995 and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. between Constitution Avenue and C Street, N.W. at any time. Comments received will be available for inspection in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.14 of the Board's rules regarding availability of information.

**FOR FURTHER INFORMATION CONTACT:** Oliver Ireland, Associate General Counsel (202) 452–3625; Scott Holz, Senior Attorney (202) 452–2966; or Jean Anderson, Staff Attorney (202) 452–2966, Legal Division; for the hearing impaired only, Telecommunications Device for the Deaf (TDD), Diane Jenkins (202) 452–3544.

**SUPPLEMENTARY INFORMATION:** Pursuant to its authority under sections 3, 7, 17 and 23 of the Securities Exchange Act of 1934, the Board is requesting comment on its securities credit or margin regulations: Regulation T (''Credit by brokers and dealers''),[1] Regulation U (''Credit by banks and lenders other than brokers or dealers for the purpose of purchasing or carrying margin stock'')[2] and Regulation X (''Borrowers of securities credit'').[3] The Board is soliciting comment on all aspects of these regulations, including issues stemming from the consolidation of Regulation G into Regulation U and issues that have been raised by commenters in the past two years and not addressed in the Board's earlier amendments. The Board is soliciting comment on whether and how to address these issues. Any additional amendments would be proposed for public comment before adoption.

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## I. Regulation T

### *A. Definitions*

#### 1. Current Market Value

The Board's margin requirement for an equity security is a percentage of the security's current market value. As a technical amendment contained in a separate document published elsewhere in today's **Federal Register**, the Board adopted a Regulation T definition of the phrase *current market value* that incorporates former § 220.3(g) of Regulation T (''Valuing securities''). This definition is not exactly the same as the definition in Regulation U. Under the Regulation T definition, a broker-dealer must use the cost of a security or the proceeds of its sale to compute the current market value of a security on trade date. Under the Regulation U definition, a lender other than a broker-dealer extending credit on trade date may use either the security's cost or the closing price of the security on the preceding day. The Board is soliciting comment on whether the definitions of current market value in the two regulations should be harmonized.

#### 2. Good Faith

The Board is requesting comment on whether it should propose to replace the current definition of *good faith* found in § 220.2 of Regulation T with a simpler, more universal definition. For example, the Uniform Commercial Code defines ''good faith'' in § 3–103(a)(4) as ''honesty in fact and the observance of reasonable commercial standards of fair dealing.'' The Board seeks comment on whether this definition would be appropriate in the context of margin regulation.

#### 3. Margin Security

Last year, the Board amended the definition of *margin security* to include ''any debt security convertible into a margin security.'' The Board stated that this would mirror the treatment of convertible bonds in Regulations G and U. The actual language of Regulation U (which now covers banks and lenders formerly subject to Regulation G) is somewhat broader: ''any debt security convertible into a margin stock or carrying a warrant or right to subscribe

[1] 12 CFR Part 220.
[2] 12 CFR Part 221.
[3] 12 CFR Part 224.

to or purchase a margin stock.'' The Board is soliciting comment on whether it should propose to use the same regulatory language in Regulation T. The Board is also soliciting comment on whether it should propose to further amend Regulation T's definition of *margin security* to include ''any warrant or right to subscribe to or purchase a margin stock,'' as this language is also found in Regulation U. Finally, the Board is soliciting comment on whether it should propose to broaden the coverage of convertible securities under the Regulation T definition of *margin security* to include any security convertible into a margin security. This last change would allow loan value for nonmargin equity securities which are convertible into a margin security.

*B. Margin Account*

1. Guarantees as Collateral

Guarantees are currently given no effect for purposes of meeting federal margin requirements pursuant to § 220.3(d) of Regulation T, but guaranteed accounts are permitted by the rules of some self-regulatory organizations (SROs)[4] for maintenance margin purposes. These SRO rules effectively allow two or more customers with accounts at a single broker-dealer to ''cross-guarantee'' some or all of their accounts. The guarantee must be in writing and allow the broker-dealer to use the money and securities in the guaranteeing account without restriction to carry the guaranteed account or pay any deficit therein. The Board is soliciting comment on whether it should propose an amendment to Regulation T to allow broker-dealers to recognize guarantees to the extent permitted by their SROs.

2. Cashless Exercise of Employee Benefit Securities

Section 220.3(e)(4) of Regulation T was adopted in 1988 to allow broker-dealers to temporarily finance the exercise of their customers' employee stock options. This procedure has come to be known as ''cashless exercise.'' In 1995, the Board proposed new language for § 220.3(e)(4) to expand its coverage to other types of employee benefit securities, such as employee stock warrants. The proposed amendment, which was adopted in 1996 substantially in the form proposed, changed the reference in § 220.3(e)(4) of Regulation T from ''a stock option issued by the customer's employer'' to securities received ''pursuant to an employee benefit plan registered on SEC Form S–8.'' After adoption of the amendment, the Board received several comments which noted that the amended provision in some respects covers *fewer* securities than the original version in that it no longer covered employee stock options not registered on SEC Form S–8. The Board is soliciting comment on whether it should propose further amendments to § § 220.3(e)(4) to ensure that broker-dealers may use the provision to help all customers who need short-term financing to acquire employee benefit securities. Comment is invited on whether the Board should define what is meant by the phrase ''employee benefit securities.''

*C. Cash Account: Net Settlement and Free Riding*

All transactions in a margin account on a given day are combined to determine whether additional margin is required. In contrast, transactions in the cash account are generally settled on a transaction-by-transaction basis. Although net settlement in the cash account would be more efficient than current practice, the requirement that securities be paid for before being sold and the 90-day freeze[5] on delaying payment beyond trade date for customers who have sold securities before paying therefor have been adopted to prevent ''free riding,'' the purchase of a security that is paid for with the proceeds of its sale. The Board believes that free riding raises supervisory as well as credit issues and is soliciting comment on whether it would be appropriate to modify the cash account to encourage efficiencies while still preventing free riding and if so, how. The Board is also soliciting comment on whether it should leave the issue of free riding to the broker-dealers' supervisory authorities: the Securities and Exchange Commission (SEC) and SROs. The Board is also soliciting comment on appropriate methods for addressing free riding in Regulation U.

*D. Lending Foreign Securities to Foreign Branches of U.S. Banks*

The Regulation T section on borrowing and lending securities[6] was amended in 1996 to allow broker-dealers to lend most foreign securities to foreign persons without many of the restrictions applied to loans of U.S. securities. Three commenters pointed out that the term ''foreign persons'' does not include foreign branches of U.S. banks. The Board is soliciting comment on whether it should propose an amendment to allow foreign branches of U.S. banks to qualify as foreign persons for purposes of Regulation T's requirements for borrowing and lending equity securities.

*E. Broker-Dealer Purchases of Privately Placed Debt Securities*

The Board views the purchase of a privately placed debt security as an extension of credit to the issuer. Broker-dealers who wish to purchase privately placed debt securities (generally for resale) whose proceeds will be used by the issuer to purchase or carry securities have been unable to do so if the debt securities are unsecured or secured by collateral other than margin and exempted securities because the Board had interpreted section 7 of the '34 Act to prohibit the extension of purpose credit that is unsecured or secured by collateral other than securities valued in accordance with Regulation T. Banks and persons other than broker-dealers who purchase these privately placed securities have not had the same problem as they have never been restricted in their ability to make purpose loans that are unsecured or secured by collateral other than securities.

In 1990, the Board issued an interpretation of the arranging provision in Regulation T to address purchases by broker-dealers of debt securities issued pursuant to SEC Rule 144A.[7] Under the interpretation, the purchase of a privately placed debt security whose proceeds will be used by the issuer to purchase, carry, or trade securities is permitted for a broker-dealer if the security is issued pursuant to SEC Rule 144A on the theory that the broker-dealer is arranging for the ultimate purchaser to acquire the security.[8]

The Board is soliciting comment on whether it should propose any amendments to Regulation T to allow broker-dealers to purchase privately placed securities that either comply with or are not covered by Regulations U and X. Possible amendments could address this issue as one of extending

[4] The primary SROs for broker-dealers in this area are the New York Stock Exchange and the National Association of Securities Dealers.

[5] *See* § 220.8(c) of Regulation T.

[6] Formerly § 220.16, now § 220.10 of Regulation T.

[7] The Board interpretation is codified at 12 CFR 220.131 and reprinted in the *Federal Reserve Regulatory Service* at 5–470.1. SEC Rule 144A, ''Private resales of securities to institutions'' is codified at 17 CFR 230.144A.

[8] The Board interpretation described the broker-dealer's role as an ''investment banking service'' because the version of Regulation T in effect at the time had limited exceptions to the general arranging prohibition. The Board has since amended the arranging section in Regulation T to broaden permissible activities and in the process has eliminated the need for a specific investment banking services exception.

rather than arranging credit and could cover debt securities beyond those covered in the Board's 1990 interpretation.

*F. Presumption of Purpose Credit*

Section 220.6(f)(2) of Regulation T (formerly § 220.9(b)) states that every extension of credit (aside from those effected to carry transactions in commodities or foreign exchange) is deemed to be purpose credit unless the broker-dealer obtains in good faith a written statement from its customer that the credit is not purpose credit. The Board is soliciting comment on whether it should propose to modify or eliminate this presumption and if so, how to assure compliance with the Board's margin requirements in Regulation T.

**II. Regulation U**

*A. Forms*

1. Purpose Statement

Both Regulation G and Regulation U require lenders to obtain a written statement from their customers as to the purpose of a loan if the credit is secured by margin stock. This form is known as a ''purpose statement'' and is designated as the FR G–3 and FR U–1, respectively. Although the margin requirements apply to all purpose loans secured by margin stock, banks are not required to obtain a purpose statement for loans that do not exceed $100,000. Nonbank lenders, who are not required to register with the Board until they have extended at least $200,000 in margin stock secured credit,[9] must obtain a purpose statement for every loan they make after reaching the registration threshold. The Board is soliciting comment on whether it would be appropriate to amend Regulation U to provide uniform requirements for purpose statements, including possible elimination of the form.

2. Other Forms and Registration Requirements

*a. Use of Regulation G forms under Regulation U:* The FR G–1 (''Registration Statement For Persons Who Extend Credit Secured by Margin Stock (Other Than Banks, Brokers or Dealers)''), FR G–2 (''Deregistration Statement For Persons Registered Pursuant to Regulation G'') and FR G–4 (''Annual Report'') were retained as part of Regulation U when it was extended to cover lenders formerly subject to Regulation G. These forms' approval from the Office of Management and Budget expires on July 31, 1998. Pending review of the comments received in response to this request for comment, the Board intends to redesignate these forms as Regulation U forms and is soliciting comment on ways to improve the reporting requirements and eliminate unnecessary burden, including possible elimination of the forms.

*b. Registration requirements:* The registration requirements for lenders formerly subject to Regulation G have been moved to § 221.3(b) of Regulation U. Nonbank lenders who extend credit secured by margin stock for any purpose are required to register with the Federal Reserve within 30 days after any calendar quarter in which the lender either: (1) Extends $200,000 or more in credit secured by margin stock; or (2) has a total of $500,000 or more in credit secured by margin stock outstanding. Persons other than banks and broker-dealers who extend securities credit below these thresholds are not subject to the registration requirements and are not limited by the Board's 50 percent margin requirement for purpose loans secured by margin stock.

*(1) Dollar thresholds:* When Regulation G was first adopted in 1968, the Board established dollar thresholds for registration so that lenders other than banks and broker-dealers who extended small amounts of credit secured by margin stock would not be regulated. These thresholds were initially $50,000 in margin stock secured credit extended or arranged in one calendar quarter or $100,000 in such credit outstanding at any time. These thresholds were last raised in 1983 to $200,000 and $500,000 and the scope of the regulation was reduced at that time to eliminate coverage of persons who arranged, but did not extend, securities credit.

The Board is soliciting comment on whether it should propose changes to the $200,000 and $500,000 thresholds for nonbank lenders.

*(2) Nonpurpose lenders:* When Regulation G was first proposed by the Board in 1967, lenders other than banks and broker-dealers were to be subject to the regulation only if they extended or arranged purpose credit (which was proposed to mean credit to purchase or carry an exchange traded security). Regulation G lenders who extended or arranged nonpurpose credit would not have been required to register with the Federal Reserve System even if the collateral for the loan included exchange-traded securities. When Regulation G was adopted the following year, the collateral coverage of the regulation was reduced to eliminate debt securities but the registration requirement was broadened to include any lender other than a bank or broker-dealer involved in a loan secured by margin equity securities, regardless of the purpose of the loan. Although the Board was originally concerned with the difficulty of assuring that previously unregulated lenders understood the concept of ''purpose credit'' (i.e. credit for the purpose of purchasing or carrying securities covered by Board regulation), the passage of time may have reduced the need to register nonpurpose lenders solely to determine that the registrants are not extending credit that is subject to the margin requirements.

The Board is soliciting comment on whether it should propose changes to the registration requirements for lenders other than banks and broker-dealers who do not extend purpose credit, such as eliminating the need for registration or establishing higher dollar thresholds. An example of a nonpurpose lender would be a mortgage finance company that extends only purchase money mortgage loans but occasionally takes margin stock as collateral in addition to mortgages.

*B. Loan Value*

1. Options

In a separate document published elsewhere in today's **Federal Register**, the Board is eliminating the Regulation U prohibition on loan value for exchange-traded options. When the Board first proposed this change in 1995, it did not propose to remove the prohibition on loan value for unlisted or over-the-counter (OTC) options.[10] Since that proposal however, the Board has amended Regulation T to allow securities self-regulatory organizations such as the New York Stock Exchange to adopt SEC-approved rules granting loan value to all options, both exchange-traded and over-the-counter. The Board is soliciting comment on whether it should propose to modify the prohibition on loan value for OTC options currently contained in Regulation U.

[9] The $200,000 threshold is based on the amount of credit secured by margin stock extended in any calendar quarter. Lenders who extend less than $200,000 in credit secured by margin stock in any calendar quarter are required to register with the Board if they have $500,000 in credit secured by margin stock outstanding during any calendar quarter.

[10] Unlisted or OTC options are not *margin stock* as defined in § 221.2 of Regulation U. Therefore, a loan secured by OTC options and other nonmargin stock collateral would not be subject to Regulation U. However, a purpose loan secured in part by margin stock (a ''mixed collateral loan'') would be subject to Regulation U and any OTC options that secure such a loan have no loan value under the current version of Regulation U.

2. Mutual Funds

Although most mutual funds are covered by the definition of *margin stock* in Regulation U, the Board has long excluded mutual funds that have at least 95 percent of its assets continuously invested in exempted securities.[11] In a separate document published elsewhere in today's **Federal Register**, the Board is excluding money market mutual funds from the definition of *margin stock* in Regulation U as well. The Board is soliciting comment on whether it should propose additional exclusions from the definition of margin stock for mutual funds which invest almost exclusively in securities entitled to good faith loan value under Regulation T, such as corporate bond funds.

**C. Exempted Transactions**

The Board extended Regulation U to cover lenders formerly subject to Regulation G because the National Securities Market Improvement Act eliminated the distinction between bank and nonbank lenders with respect to loans to broker-dealers. The Board now permits bank and nonbank lenders to make loans to broker-dealers on the same basis, including the exemptions contained in § 221.5, ''Special purpose loans to brokers and dealers.'' Banks are also permitted to make unregulated loans to persons other than broker-dealers pursuant to § 221.6, ''Exempted transactions.'' The only one of the eight exemptions listed in § 221.6 was contained in former Regulation G: loans to employee stock ownership plans (ESOPs) qualified under section 401 of the Internal Revenue Code. This exemption, formerly found in § 207.5(c) of Regulation G, has been retained for nonbank lenders in § 221.4(c) of Regulation U. The Board is soliciting comment on whether it should propose to extend the exemptions for banks in § 221.6 of Regulation U to nonbank lenders as well. The Board seeks comment on whether it should propose to consolidate the exemption for loans to ESOPs with loans to ''plan lenders'' as defined in § 221.4(b) of Regulation U.

**III. Regulation X**

Regulation X (''Borrowers of securities credit'') implements section 7(f) of the '34 Act, which applies the margin requirements to borrowers.[12] Most of the language in Regulation X is taken directly from the statute. If the Board were to repeal Regulation X, section 7(f) would still apply to borrowers of securities credit. The only substantive reason for the Board's adoption of a regulation covering borrowers is to exercise its authority under section 7(f)(3) of the '34 Act to exempt persons from the application of section 7(f). These exemptions are found in §§ 224.1(b)(1), (b)(2) and (b)(3) of Regulation X.

*A. National Securities Markets Improvement Act*

In response to the Board's request for comment on appropriate amendments to its margin regulations to reflect the statutory changes contained in NSMIA, two commenters expressed concern that foreign affiliates of exempt U.S. broker-dealers continue to be subject to Regulation X (because they are ''foreign persons controlled by a U.S. person'') and their borrowings therefore have to comply with Regulation U, while the borrowings of their parent would not be subject to Board regulation. The commenters urged the Board to exempt foreign broker-dealer affiliates of exempt U.S. broker-dealers from Regulation X. The Board seeks comment on whether it should propose such an amendment.

*B. Periodic Review*

In conjunction with its periodic review of the margin regulations, and the requirements of section 303 of the Riegle Community Redevelopment and Regulatory Improvement Act of 1994, the Board is requesting comment on other appropriate amendments to Regulation X to reduce unnecessary regulatory burden.

**IV. All Regulations**

*A. Definition of National Securities Exchange*

The Board's margin regulations have always covered all equity securities registered on a national securities exchange. Although the phrase ''national securities exchange'' is not defined in the Board's margin regulations or section 3(a) of the Securities Exchange Act of 1934,[13] the Board has understood the term to mean a securities exchange registered with the Securities and Exchange Commission (SEC) under section 6 of the '34 Act (''National securities exchanges;'' 15 U.S.C. 78f). The Board is soliciting comment on whether it should propose to add a definition of the phrase ''national securities exchange'' into Regulations T and U.

*B. Purpose Statements as Model Forms*

The Board has established three purpose statements (FR G–3, FR T–4, and FR U–1) for the three types of lenders covered under its securities credit regulations. Lenders other than broker-dealers are specifically required by the Board's regulation to obtain the FR G–3 and FR U–1 in certain circumstances. However, Regulation T does not refer to the FR T–4 and states only that in certain circumstances a broker-dealer shall accept ''a written statement'' that ''shall conform to the requirements established by the Board.''

The Board is requesting comment on the continuing need for purpose statements, the form of which is prescribed by regulation, or whether model forms would serve the Board's purposes, or whether the form of the statement should be left to the affected institution or its regulatory supervisors.

*C. Repurchase of Securities by Issuer*

The Board held in 1962 that credit extended to an issuer to repurchase its own securities *for immediate retirement* is not purpose credit subject to the Board's margin requirements.[14] The 1962 interpretation states that ''[i]t should not be regarded as governing any other situations; for example, the interpretation does not deal with cases where securities are being transferred * * * to the issuer for a purpose other than immediate retirement. Whether the margin requirements are inapplicable to any such situations would depend upon the relevant facts of actual cases presented.'' Three commenters requested that this interpretation be expanded to cover all credit extended to an issuer to repurchase its securities. While the interpretation requires immediate retirement of the securities repurchased, this limitation can be circumvented by having the issuer retire the securities it repurchases and then reissue those or similar securities later. The Board is soliciting comment on whether it should propose to incorporate its 1962 interpretation into Regulations T and U and whether the coverage of the interpretation should be broadened.

*D. Forward Transactions*

Commenters in earlier dockets and members of the securities bar and industry have requested guidance from the Board on the proper treatment of forward purchases and sales of

[11] The definition of *margin stock* is found in § 221.2 of Regulation U.

[12] In contrast, the Board's other margin regulations were adopted under the authority of sections 7(c) and 7(d) of the '34 Act and apply to lenders of securities credit.

[13] Definitions found in section 3(a) of the '34 Act are incorporated by cross-reference in the Board's margin regulations.

[14] 12 CFR 220.119, reprinted in the *Federal Reserve Regulatory Service* at 5–490.

securities. Forwards on nonequity and exempted securities are permitted in the good faith account in Regulation T and are not covered by Regulation U. The Board is soliciting comment on whether and how it should amend Regulations T and U to address transactions involving forward purchases and sales of equity securities.

By order of the Board of Governors of the Federal Reserve System, December 18, 1997.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 98–885 Filed 1–15–98; 8:45 am]

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Friday
January 16, 1998

# Part IV

# Department of Agriculture

## Agricultural Marketing Service

**7 CFR Parts 997 and 998**

**Peanuts Marketed in the United States; Relaxation of Handling Regulations; Final Rule**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Parts 997 and 998**

**[Docket Nos. FV97–997–1 IFR and FV97–998–1 IFR]**

## Peanuts Marketed in the United States; Relaxation of Handling Regulations

**AGENCY:** Agricultural Marketing Service (AMS), USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule relaxes, for 1997 and subsequent crop peanuts, several provisions regulating the handling of domestically produced peanuts marketed in the United States. The relaxation includes: Eliminating need for approval of certain facilities; allowing minimum grade requirements for lots of splits to correspond with grade standards; allowing certain lots to be custom blanched; providing that under the Agreement, all lots of edible quality peanuts be eligible for indemnification benefits; providing that peanuts which have been certified as meeting the minimum grade requirements, but fail on aflatoxin, may be roasted prior to being certified as meeting the latter; and allowing rejected peanuts to be placed in ''suitable containers'', not just ''bagged''. This rule will improve efficiency and reduce program costs resulting in a similar reduction in assessment rates charged Agreement signer and non-signer handlers.

**DATES:** Effective January 20, 1998; comments received by March 17, 1998 will be considered prior to issuance of a final rule.

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

**FOR FURTHER INFORMATION CONTACT:** George J. Kelhart or Jim Wendland, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, D.C., 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 146 (7 CFR Part 998) and the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The marketing agreement and the regulations issued thereunder (7 CFR Part 998) and the non-signatory peanut handler regulations (7 CFR Part 997) regulate the quality of domestically produced peanuts.

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Following explanation of each change to the Agreement's regulation, the corresponding change to the non-signatory regulation is discussed.

### Incoming Regulations

*Farmers Stock Storage and Handling Facilities:* The Committee recommended amending § 998.100 Incoming quality regulation for 1995 and subsequent crop peanuts by removing paragraph (g) *Farmers Stock Storage and Handling Facilities* which currently regulates the condition of such facilities and authorizes Committee inspection. The Committee recommended the change to save approximately $450,000, by eliminating the positions of the seven fieldmen whose specified duties through last crop year included spending an estimated 60–65 percent of their time inspecting and approving such facilities. The vote was 17 ''For'' and 1 ''Against'', with the dissenting voter contending that the fieldmen were providing valuable services and their positions should not be eliminated and that inspection and approval of such facilities by the Committee staff was important. Handlers contend they are already paying their own employees to do facilities inspections and the cost of such duplication of effort needs to be eliminated. Also, this cost-cutting will not adversely affect quality since peanuts must still meet the Outgoing Quality Regulation.

Elimination of the regulatory provision will allow the Committee to reduce its non-headquarters staff from seven to one compliance officer in each of the three production areas and reduce the current ''fieldmen'' staffing costs to zero. The compliance officers will conduct compliance audits of Agreement signers similar to AMS approved non-signer program compliance plan procedures where AMS Compliance Staff auditors check non-signers' records. A revised 1997–98 compliance plan from the Committee includes this new procedure. AMS believes this will continue to assure compliance under the Agreement.

The non-signer regulation contains no similar requirements for inspection and approval of such facilities, so no change is needed.

### Outgoing Regulations

The Committee unanimously recommended that § 998.200(a) be amended to provide that minimum grade requirements for lots of ''splits'' (the separated halves of peanut kernels) be modified to correspond with ''United States Standards For Grades Of: (1) Cleaned Virginia Type Peanuts In The Shell; or (2) Shelled Runner Type Peanuts; or (3) Shelled Spanish Type Peanuts; or (4) Shelled Virginia Type Peanuts'' (7 CFR Part 51: Sections 51.1235–1242; 51.2710-2721; 51.2730–2741; and 51.2750–2763, respectively. This increase to 2.00 percent from the current 1.50 percent for unshelled peanuts and damaged kernels is needed to provide consistency with the grade standards. Under the current regulation, a handler could have a lot of peanuts which met U.S. Grade Standards for U.S. Splits, but failed to meet Agreement requirements for edible quality. It was expected that this change might reduce the number of lots which will need to be remilled to meet outgoing quality requirements. Although this reduction was roughly estimated at something less than 10 percent in an average year, this year's crop has been stressed by drought conditions and virtually all peanut producing States have expressed having problems with quality. Thus, this change could still result in significant reductions in costs for handlers.

Another modification to § 998.200(a) will remove Table 2.—INDEMNIFIABLE GRADES. The Committee had originally established this table in its regulations to qualify higher grade peanut lots for its indemnification program covered in § 998.300. However, coverage under this provision has been greatly reduced by

recent Committee action, to the point that the table is no longer deemed necessary. The Department agrees that Table 2 is not needed and its removal will simplify the Agreement regulations and therefore it is hereby removed.

Similar changes are made to the corresponding § 997.30(a) of the non-signer regulation.

The Committee unanimously recommended that § 998.200(h)(1) be amended to allow lots of peanuts which fail edible quality requirements, due to excessive fall through, to be custom blanched. However, such lots will have to be certified as meeting minimum ''fall through'' requirements after blanching. The change eliminates the current requirement that prior to movement of such peanuts, handlers have to submit a form to the Committee and receive authorization for movement and blanching of each such lot.

Section 997.40(d) of the non-signer regulation currently does not require such handlers to submit a request to the Department and receive authorization for movement and blanching of each such lot. Therefore, no similar change to that provision is needed. However, it is being amended to add ''fall through'' to the category of items allowed in the first and third sentences.

The Committee also unanimously recommended a further change to paragraph (h), specifically that subparagraphs (h)(1) and (h)(2) be further amended to provide that reject peanuts may be placed in suitable containers acceptable to the Committee. The current requirement specifies ''bagged,'' which refers to the older standard-sized burlap bags. It does not include the many newer and more efficient containers which are easier to handle such as tote bags, corrugated containers (including those with capacities of over a ton), Super Sacks, and other various company containers used by individual peanut product manufacturers. The change will allow handlers to use more efficient containers or those desired by their customers. For purposes of this provision, most any container that handlers use other than bulk loads—i.e., those in which peanuts are not in any type of receptacle other than the vehicle transporting them—will be considered suitable.

Section 997.40(c) of the non-signer regulation currently provides for ''in bulk or bags or other suitable containers.'' To make it consistent with the Agreement's amended regulation, the words ''in bulk or'' are being removed. Paragraphs (d) and (e) are also being amended by removing the word ''bagged'' and replacing it with the words ''placed in suitable containers.''

The Committee also unanimously recommended that § 998.200 Outgoing quality regulation and § 998.300 Terms and conditions of indemnification . . . be amended to make all lots of edible quality peanuts indemnifiable, for freight reimbursement, when rejected on appeal after being certified ''negative'' as to aflatoxin. Under provisions specified in § 998.300, product claim lots of edible quality peanuts will now also be indemnifiable. This involves lots where a handler sustained a loss as a result of a buyer withholding from human consumption any or all of the product made from a lot of peanuts which had been determined to be unwholesome due to aflatoxin after such lot had originally been certified ''negative'' as to aflatoxin. This change will provide consistency by treating all edible quality peanuts equally, whether appeal claims or product claims. Although these changes should further reduce costs and will promote uniformity in the handling of indemnification of all edible quality peanuts, there is no way to accurately quantify how much these reductions would be, because the savings would be different for each handler. However, the total savings would be significantly less than the projected approximately $200,000 total 1996 crop indemnification costs.

The non-signer enabling legislation does not provide authority for indemnification. Therefore, no similar change is being made in the non-signer regulation.

The Committee further unanimously recommended that § 998.200(h)(3) be amended to provide that peanuts which have been certified as meeting minimum grade requirements specified in § 998.200(a)(1), but fail to meet requirements for aflatoxin, may be roasted while being blanched prior to being certified as meeting the aflatoxin requirements. After roasting, such peanuts must be sampled and assayed for aflatoxin content but do not have to be re-sampled and analyzed for grade again. This simplified process is recommended by the Committee because blanched peanuts, after certification, often are placed back into blancher for additional heating. Removing the blanched peanuts short of the complete roasting process for sampling and aflatoxin analysis, and then reinserting them back into the blancher adds costs to the roasting process and usually causes additional, unintentional damage due to the extra handling of the kernels. Also, the roasting will enhance the blanching efforts to eliminate aflatoxin, thus improving the wholesomeness, quality and value of such shelled peanuts. The savings involved in blanching and roasting in one step should far outweigh the approximately $40 per hour costs of having an inspector present during this process to maintain needed positive lot identification. Any residual peanuts, excluding skins and hearts, resulting from this roasting process, must be red tagged and disposed of to non-edible peanut outlets. A similar change is being made to § 997.40(d) of the non-signer regulation.

The unchanged portions of the incoming and outgoing regulations currently in effect for 1996 and subsequent crop peanuts will remain in effect for 1997 and subsequent crop peanuts.

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

There are approximately 27 signatory and 30 non-signatory peanut handlers who are currently subject to regulations under the Agreement and non-signer program respectively and approximately 25,000 commercial peanut producers in the 16-State production area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. Approximately 25 percent of the signatory handlers, virtually all of the non-signers, and most of the producers may be classified as small entities. This action will be favorable to the industry by tending to improve efficiency, reducing costs and increasing returns.

The relaxations to handling regulations specified in this rule will simplify requirements and enable handlers, both large and small, to cut costs and more efficiently handle their peanut supplies, without jeopardizing safeguard requirements in the current regulations.

The relaxations include: 1. The elimination of the requirement for inspection and approval of farmers stock storage and handling facilities will save approximately $450,000 by eliminating the positions of the seven fieldmen, who had performed this activity through last crop year. Handlers contend they already paid their own employees to do this and the duplicate cost should be eliminated;

2. Relaxing the minimum grade requirements for ''splits'' to correspond with U.S. grade standards might reduce the number of lots which need to be remilled this year by 10 percent due to stressed growing conditions in virtually all areas. This should result in significant reductions in costs for handlers;

3. Another relaxation is to provide that all lots of edible quality peanuts, whether appeal claims or product claims, will be eligible for handler indemnification benefits. Thus, handlers with product claim lots will now also be eligible for reimbursement of most transportation expenses on such lots. Such additional reimbursement was not publicly quantified by the Committee, but would be less than the projected approximately $200,000 total 1996 crop indemnification costs;

4. The revised provision to allow lots which fail edible quality requirements, due to excessive fall through, to be custom blanched eliminates the current requirement that handlers have to submit a form to the Committee and receive authorization for movement and blanching of each such lot. This relaxation will eliminate unnecessary paperwork and save time for all affected handlers;

5. Relaxing the requirement that peanuts be ''bagged'' (i.e., placed only in older standard-size burlap bags) by allowing the use of suitable containers, will permit use of the many newer and more efficient containers or those desired by handlers' customers; and

6. Another relaxation will allow peanuts which have been certified as meeting the minimum grade requirements, but fail to meet requirements for aflatoxin, to be roasted while being blanched prior to being certified as meeting the latter requirements. This simplified process eliminates reinserting such peanuts back into the blancher, which doubles the processing costs and tends to lower the peanuts' quality and value by causing additional damage to them. Such savings should far outweigh the approximately $40 per hour expense of having an inspector present to maintain needed positive lot identification.

The relaxed requirements will significantly improve efficiency and have enabled the Committee to cut in half for the 1997–98 and subsequent crops years its administrative costs and assessment rate charged Agreement signer and non-signer handlers to finance their respective programs. Further, the rate of assessment last season was $0.70 per net ton of assessable peanuts. The rate for the 1997–98 crop year has been reduced to $0.35 per net ton by another rulemaking action, as published in the September 17, 1997, issue of the **Federal Register** (62 FR 48749). This will save regulated domestic handlers approximately $500,000 in administrative assessment costs which should, to a great extent, also correspond to the savings from this relaxation action.

The specifics of each change and why they will tend to increase returns to handlers were covered in detail near the beginning of this rule under the discussion starting with ''Incoming regulations.''. These changes will relax requirements on regulated domestic peanut handlers, improve their efficiency and cut costs, to benefit the peanut industry, manufacturers, and consumers, while still assuring quality of all peanuts in domestic human consumption markets.

As with all Federal marketing agreement and order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. Consistent with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Committee unanimously recommended greatly reducing reporting and recordkeeping requirements on both large and small domestic peanut handlers regulated under these two programs. It will eliminate 20 of the 21 Committee forms currently approved by OMB that might accompany peanut shipments, to only require use of the Form PAC–1. The PAC–1 is mailed to handlers on a monthly basis and is used to report receipts and acquisitions of farmers stock peanuts and to remit assessments. It is estimated this will eliminate 95 percent (or about 2,291 hours and assuming $10 per hour, would save respondents nearly $23,000 in costs) of the current estimated 2,417 hours of total reporting burden on Agreement signers, including small businesses, and a proportional, smaller reduction in non-signer reporting burden. A notice of the proposed revision was published in the July 31, 1997, issue of the **Federal Register** (62 FR 41021). Sixty days were allowed for comments. One comment was received, from the American Peanut Shellers Association, supporting the reduced burdens. This information collection package has been submitted to the Office of Management and Budget (OMB) for approval.

In addition, the Department has not identified any Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the peanut industry and all interested persons were invited to attend the meeting and participate in the Committee's deliberations. Like all Committee meetings, the April 29–30, 1997, meeting was a public meeting and all entities, both large and small, were able to express their views on the issues. The 18-member Committee is composed of an equal number of peanut handlers and producers, the majority of whom are small entities.

Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Committee. The Committee's Regulations, Indemnification and Quality Subcommittee and ''New Concept'' Subcommittee met on January 28, 1997, and discussed these issues in detail. On March 25, 1997, the Committee held an informational meeting to hear a presentation by the National Peanut Council's Peanut Industry Revitalization Project Steering Committee and discuss those issues there and back with their industry peers before voting on those issues at the April Committee meeting. The Committee's Administrative Budget Subcommittee also meet March 25, 1997, to discuss budget recommendations. These meetings were also public meetings and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

An objective of the two domestic programs is to ensure that only high quality and wholesome peanuts enter human consumption markets in the United States. About 70 percent of domestic handlers, handling approximately 95 percent of the crop volume, have signed the Agreement. The remaining 30 percent are non-signatory handlers handling the remaining 5 percent of domestic production.

Under these regulations, farmers stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) are required to be diverted to inedible uses. Each lot of milled peanuts must be sampled and the samples chemically analyzed for aflatoxin content. Costs to administer the Agreement and to reimburse the Department for oversight of the non-signatory program are paid by an assessment levied on handlers in the respective programs.

The 18-member Committee, which is composed of an equal number of peanut producers and handlers, meets at least annually to review the Agreement's rules and regulations, which are effective on a continuous basis from one

year to the next. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department assesses Committee recommendations, as well as information from other sources, prior to making any recommended changes to the regulations under the Agreement.

Section 608b of the Act was amended in 1989 to require that all peanuts handled by persons who have not entered into the Agreement (non-signers) be subject to the same quality and inspection requirements to the same extent and manner as are required under the Agreement. Section 608b was further amended in 1993 to impose similar requirements regarding administrative assessments. The non-signatory handler regulations have been amended several times thereafter and are published in 7 CFR part 997.

Thus, the Committee's recommended changes to the Agreement regulation, as established in this rule, also are established for the Agreement non-signers. This interim final rule identifies the corresponding change to the non-signer regulation for each change to the Agreement regulation.

According to the Committee, the domestic peanut industry is undergoing a period of great change. The Committee bases its view, in part, on findings in a recent study entitled ''United States Peanut Industry Revitalization Project'' developed by the National Peanut Council and the Department's Agricultural Research Service (May 1996).

According to the study, the U.S. peanut industry has been in a period of dramatic economic decline since 1991 because: (1) Per capita peanut consumption has steadily declined a total of 11 percent; (2) harvested acreage has declined 25 percent; (3) production has declined 30 percent and farm value dropped 29 percent; and (4) imports of peanuts and peanut products have increased from insignificant quantities to 48,736 raw farmer stock tons in 1995 and 55,536 in 1996.

The study points to recent increases in the duty-free import quota for raw peanuts due to the North American Free Trade Agreement (NAFTA) and the Uruguay Round Agreements under the General Agreement on Tariffs and Trade (GATT). Under Section 22 import quota provisions, the volume of U.S. peanut imports had been limited to about 2.3 million pounds, in-shell basis, annually. Thus, imports have historically represented about one-tenth of 1 percent of U.S. food use of peanuts. Under NAFTA, Mexico has been granted a minimum access level for duty-free entry of peanuts of about 10 million pounds, in-shell basis. This level will increase about 3 percent annually through 2008, when quantitative limits will cease. Mexico's 1998 duty-free quota will total 8.4 million pounds. Under GATT, the 1995 quota was 74.5 million pounds. This year it is 86.8 million pounds, will increase to 96.7 million pounds (Argentina 81.2 and all other 15.5) in 1998, and can grow to about 155 million pounds (about 4 percent of U.S. disappearance) in 2000.

The study also projects that farm production costs and revenue will be equal by the year 2000, as will handler costs and revenue, leaving no profit.

In addition, the modification of the Federal farm peanut poundage quota regulations implemented under the Agricultural Market Transition Act of 1996 (1996 Act) has resulted in the domestic industry undergoing significant changes scheduled to continue through the year 2002. The peanut support price has been reduced from $670 per ton in 1995 to $610 per ton through 2002. The USDA's Farm Service Agency final rule implementing the Act was published May 9, 1997 (62 FR 25433). That rule indicates that economic impacts of the 1996 Act include expected reductions in domestic peanut producers' revenue of $1.25 billion from 1996 through 2002. Quota lease holders could absorb a loss of about $40 million annually because of reduced leasing rates due to the lower peanut price support. Also, capitalized value of quotas could decline $200 to $300 million, thus reducing land values and the tax base of rural communities.

The Committee agrees that all of these factors combined show that the domestic peanut industry had been in decline and that the outlook was not expected to change without some positive intervention by the industry.

World supply and demand are less important for peanuts than most U.S. farm commodities. Much of world peanut production is for non-food uses, although production for food use might increase a little if there were no U.S. import restrictions. Also, import quotas, though increased recently, still are set at relatively low levels.

Domestic peanut production in 1996 was approximately 3.66 billion pounds, with a farm value of slightly under $1 billion. The Department's November 1 forecast pegs the 1997 peanut crop production at 3.5 billion pounds, down approximately 4 percent from last year. Harvested acreage for 1997 is forecast to be 1.384 million acres, up 4,500 acres from a year ago. The U.S. average yield per acre for the 1997 crop is forecast at 2,528 pounds, down 11 pounds per acre from the 1996 crop.

Production is expected to gradually increase from 1996 to 2002 because domestic food use is projected to rise about 1.5 percent annually. Imports are expected to remain at a relatively small percentage of total U.S. peanut use.

Estimated exports of 750 million pounds in Marketing Year (MY) 1997 are below the average for the prior 3 years, but are 11 percent more than a year earlier. Peanut oil prices are expected to average about 38 cents a pound of oil in MY 1997, 6 percent lower than MY 1996 as vegetable oil supplies return to more normal levels. Peanut meal prices for MY 1997 are expected to decline to $175 a ton, down 25 percent from MY 1996 because of larger soybean meal supplies.

The season average price of farmer stock peanuts for MY 1997 may remain unchanged from the 28.5 cents per pound average for 1996. This was the lowest price of the last two years and reflects the adjustment to the reduced quota support level and an unexpected change in the proportions of quota and additionals in 1997 production. Average prices to growers are expected to increase, but will remain below 1995 prices because of the lower quota price support level. The value of farm production is expected to gradually rise and surpass that of 1995 by 2000/01.

The Committee recommended the changes in this rulemaking to the Agreement's Incoming and Outgoing regulations for 1997 and subsequent crop peanuts at its April 30, 1997, public meeting.

**Alternative Actions Considered**

Although the Committee could have recommended no changes or less changes to the current regulations, it unanimously concluded that those were not satisfactory solutions. It believes that all possible simplification and cost-cutting should be done and that these regulations should focus more on outgoing quality and less on the shelling and milling processes necessary to meet the outgoing, human consumption requirements. Newer, high technology milling and blanching equipment enable handlers to recondition failing peanut lots that could not have been economically reconditioned when the regulations were first promulgated. Therefore, it is no longer necessary to impose restrictions that hinder the efficiency of handling operations and result in the loss of potentially good quality peanuts. Thus, the Committee believes these changes will tend to improve the returns to growers and handlers, while still maintaining consumer safeguard provisions in the current domestic regulations, because

all peanuts intended for human consumption must still be inspected and certified acceptable for such use.

After review of the recommendations, the Department concurs that the recommended changes will tend to improve returns to the industry and be in the public interest. Expected benefits of the changes were included in the previous discussion of each individual change.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Nos. 0581–0067 (for Agreement signers) and 0581–0163 (for non-signers).

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

This rule invites comments on changes to the quality regulations currently prescribed under the Agreement and the non-signers program. All written comments timely received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes requirements currently in effect; (2) the 1997 peanut crop year began July 1, 1997, and the changes should be effective as soon as possible to allow the industry to receive the benefits for as much of the remainder of the crop year as possible; (3) the Committee unanimously recommended these changes at a public meeting and all entities, both large and small, were able to express views on these issues; (4) this rule provides a 60-day opportunity for comment, and all written comments timely received will be considered prior to finalization of the rule.

**List of Subjects**

*7 CFR Part 997*

Food grades and standards, Peanuts, Reporting and recordkeeping requirements.

*7 CFR Part 998*

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 997 and 998 are amended as follows:

## PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS HANDLED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

1. The authority citation for 7 CFR part 997 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 997.30 is amended by revising paragraph (a), to read as follows:

### Quality Regulations

**§ 997.30 Outgoing Regulation.**

(a) *Shelled peanuts*. (1) No handler shall dispose of shelled peanuts for human consumption unless such peanuts are positive lot identified, certified ''negative'' as to aflatoxin and certified as meeting the following requirements:

MAXIMUM LIMITATIONS

| Type and grade category | Unshelled peanuts and damaged kernels (percent) | Unshelled peanuts, damaged kernels and minor defects (percent) | Fall through | | | Foreign material (percent) | Moisture (percent) |
|---|---|---|---|---|---|---|---|
| | | | Sound split and broken kernels | Sound whole kernels | Total | | |
| Excluding lots of ''splits'' | | | | | | | |
| Runner ..... | 1.50 | 2.50 | 3.00%; 17/64 inch round screen. | 3.00%; 16/64×3/4 inch slot screen. | 4.00%; both screens. | .20 | 9.00 |
| Virginia (except No. 2). | 1.50 | 2.50 | 3.00%; 17/64 inch round screen. | 3.00%; 15/64×1 inch slot screen. | 4.00%; both screens. | .20 | 9.00 |
| Spanish and Valencia. | 1.50 | 2.50 | 3.00%; 16/64 inch round screen. | 3.00%; 15/64×3/4 inch slot screen. | 4.00%; both screens. | .20 | 9.00 |
| No. 2 Virginia ..... | 1.50 | 3.00 | 6.00%; 17/64 inch round screen. | 6.00%; 15/64×1 inch slot screen. | 6.00%; both screens. | .20 | 9.00 |
| Lots of ''splits'' | | | | | | | |
| Runner (not more than 4% sound whole kernels). | 2.00 | 2.50 | 3.00%; 17/64 inch round screen. | 3.00%; 14/64×3/4 inch slot screen. | 4.00%; both screens. | .20 | 9.00 |
| Virginia (not less than 90% splits). | 2.00 | 2.50 | 3.00%; 17/64 inch round screen. | 3.00%; 14/64×1 inch slot screen. | 4.00%; both screens. | .20 | 9.00 |
| Spanish and Valencia (not more than 4% sound whole kernels). | 2.00 | 2.50 | 3.00%; 16/64 inch round screen. | 3.00%; 13/64×3/4 inch slot screen. | 4.00% both screens. | .20 | 9.00 |

(2) The term *fall through*, as used in this paragraph, shall mean sound split and broken kernels and whole kernels which pass through specified screens. Prior to shipment, appropriate samples for pretesting shall be drawn in accordance with paragraph (c) of this section from each lot of peanuts. For the current crop year, ''negative'' aflatoxin content means 15 parts per billion (ppb) or less for peanuts which have been certified as meeting edible quality grade requirements.

* * * * *

3. In § 997.40, paragraph (c) introductory text is amended by removing the words ''bulk or'', paragraph (e) is amended by removing the word ''bagged'' and adding in its place the words ''placed in suitable containers acceptable to AMS'', paragraph (d) is amended by removing the word ''bagged'' and adding in its place the words ''placed in suitable containers acceptable to AMS'', and adding after the last sentence, 5 additional sentences, to read as follows:

**§ 997.40 Reconditioning and disposition of peanuts failing quality requirements.**

* * * * *

(d) * * * Handlers may contract with Committee approved blanchers for roasting positive lot identified shelled peanuts, which originated from Segregation 1 peanuts, that meet the grade requirements of paragraph (a) of this section but are positive as to aflatoxin. Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and a valid aflatoxin certificate. To be eligible for disposal into human consumption outlets, such peanuts after roasting, shall have had the positive lot identity maintained and be accompanied by a negative aflatoxin certificate. The residual peanuts, excluding skins and hearts, resulting from roasting under these provisions, shall be placed in suitable containers acceptable to AMS and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition; or that in the alternative, such residuals shall be positive lot identified by a Federal or Federal-State Inspection Service, and shall be disposed of, by the blancher, to handlers who are crushers, or to crushers who are not handlers under the Agreement only on the condition that they agree to comply with the terms of paragraph (c) of this section and all other applicable requirements of this regulation. Roasting under the provisions of this paragraph shall be performed only by blanchers who are approved by the Committee.

* * * * *

## PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

**§ 998.100 [Amended]**

2. Section 998.100 is amended by removing paragraph (g), redesignating paragraphs (h) and (i) as paragraphs (g) and (h), and removing the number ''1996'' in the section heading and adding in its place the number ''1997''.

3. In § 998.200, the section heading and paragraphs (a), (h)(1) and (h)(2) are revised and a new paragraph (h)(3) is added to read as follows:

**§ 998.200 Outgoing quality regulation for 1997 and subsequent crop peanuts.**

* * * * *

(a) *Shelled peanuts.* (1) No handler shall dispose of shelled peanuts for human consumption unless such peanuts are positive lot identified, certified ''negative'' as to aflatoxin, and certified as meeting the following requirements:

MAXIMUM LIMITATIONS

| Type and grade category | Unshelled peanuts and damaged kernels (percent) | Unshelled peanuts, damaged kernels and minor defects (percent) | Fall through | | | Foreign materials (percent) | Moisture (percent) |
|---|---|---|---|---|---|---|---|
| | | | Sound split and broker kernels | Sound whole kernels | Total | | |
| Excluding lots of ''splits'' | | | | | | | |
| Runner ..... | 1.50 | 2.50 | 3.00%; 17/64 inch round screen. | 3.00% 16/64 × 3/4 inch slot screen. | 4.00%; both screens. | .20 | 9.00 |
| Virginia (except No. 2. | 1.50 | 2.50 | 3.00%; 17/64 inch round screen. | 3.00%; 15/64 × 1 inch slot screen. | 4.00%; both screens. | .20 | 9.00 |
| Spanish and Valencia. | 1.50 | 2.50 | 3.00%; 16/64 inch round screen. | 3.00%; 15/64 × 3/4 inch slot screen. | 4.00% both screens. | .20 | 9.00 |
| No. 2 Virginia | 1.50 | 3.00 | 6.00%; 17/64 inch round screen. | 6.00%; 15/64 × 1 inch slot screen. | 6.00%; both screens. | .20 | 9.00 |
| Lots of ''splits'' | | | | | | | |
| Runner (not more than 4% sound whole kernels. | 2.00 | 2.50 | 3.00%; 17/64 inch round screen. | 3.00%; 14/64 × 3/4 inch slot screen. | 4.00%; both screens. | .20 | 9.00 |
| Virginia (not less than 90% splits. | 2.00 | 2.50 | 3.00%; 17/64 inch round screen. | 3.00%; 14/64 × 1 inch slot screen. | 4.00%; both screens. | .20 | 9.00 |
| Spanish and Valencia (not more than 4% sound whole kernels). | 2.00 | 2.50 | 3.00%; 16/64 inch round screen. | 3.00%; 13/64 × 3/4 inch slot screen. | 4.00%; both screens. | .20 | 9.00 |

(2) The term *fall through*, as used in this paragraph, shall mean sound split and broken kernels and whole kernels which pass through specified screens.

* * * * *

(h) * * * (1) Handlers may blanch or cause to have blanched positive lot identified shelled peanuts, which originated from Segregation 1 peanuts, that fail to meet the requirements of paragraph (a) of this section. Lots of peanuts which are moved under these provisions must be accompanied by a valid grade inspection certificate and the title shall be retained by the handler until the peanuts are blanched and certified by an inspector of the Federal or Federal-State Inspection Service as meeting the requirements for disposal into human consumption outlets. To be eligible for disposal into human consumption outlets, such peanuts after blanching, must meet specifications as listed in paragraph (a) of this section and be accompanied by an aflatoxin certificate determined to be negative by the Committee. Lots of peanuts which have been certified as meeting fall through requirements as specified in paragraph (a) of this section, prior to blanching, shall be exempt from fall through requirements after blanching. The residual peanuts, excluding skins and hearts, resulting from blanching under these provisions, shall be placed in suitable containers acceptable to the Committee and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition; or, in the alternative, such residuals shall be positive lot identified by the Federal or Federal-State Inspection Service, and shall be disposed of, by the blancher, to handlers who are crushers, or to crushers who are not handlers under the Agreement only on the condition that they agree to comply with the terms of paragraph (g) of this section and all other applicable requirements of the Agreement. Blanching under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such blanching.

(2) Handlers may contract with Committee approved remillers for remilling shelled peanuts, which originated from Segregation 1 peanuts, that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of this section: *Provided*, That such lots of peanuts contain not in excess of 10 percent fall through. Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and must be positive lot identified and the title of such peanuts shall be retained by the handler until the peanuts have been remilled and certified by the Federal or Federal-State Inspection Service as meeting the requirements for disposition to human consumption outlets specified in paragraph (a) of this section, and be accompanied by an aflatoxin certificate determined to be negative by the Committee. Remilling under these provisions may include composite remilling of more than one such lot of peanuts owned by the same handler. However, such peanuts owned by one handler shall be held and remilled separate and apart from all other peanuts. The residual peanuts resulting from remilling under these provisions, shall be placed in suitable containers acceptable to the Committee and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition; or, in the alternative, such residuals shall be positive lot identified by the Federal or Federal-State Inspection Service, and shall be disposed of, by the remiller, to handlers who are crushers, or to crushers who are not handlers under the Agreement only on the condition that they agree to comply with the terms of paragraph (g) of this section and all other applicable requirements of the Agreement. Remilling under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such remilling.

(3) Handlers may contract with Committee approved blanchers for roasting positive lot identified shelled peanuts, which originated from Segregation 1 peanuts, that meet the grade requirements of paragraph (a) of this section but are positive as to aflatoxin. Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and a valid aflatoxin certificate. To be eligible for disposal into human consumption outlets, such peanuts after roasting, shall have had the positive lot identity maintained and be accompanied by an aflatoxin certificate determined to be negative by the Committee. The residual peanuts, excluding skins and hearts, resulting from roasting under these provisions, shall be placed in suitable containers acceptable to the Committee and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition; or in the alternative, such residuals shall be positive lot identified by a Federal or Federal-State Inspection Service, and shall be disposed of, by the blancher, to handlers who are crushers, or to crushers who are not handlers under the Agreement only on the condition that they agree to comply with the terms of paragraph (g) of this section and all other applicable requirements of the Agreement. Roasting under the provisions of this paragraph shall be performed only by blanchers who are approved by the Committee.

* * * * *

Dated: January 9, 1998.

**Sharon Bomer Lauritsen,**

*Acting Deputy Administrator, Fruit and Vegetable Programs.*

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# Part V

# Securities and Exchange Commission

## 17 CFR Part 240

## Amendments to Beneficial Ownership Reporting Requirements; Final Rule

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 240

**[Release No. 34–39538; File No. S7–16–96; International Series—1111]**

**RIN 3235–AG81**

## Amendments to Beneficial Ownership Reporting Requirements

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission is today adopting amendments to its rules relating to the reporting of beneficial ownership in publicly held companies. These amendments make the short-form Schedule 13G available, in lieu of Schedule 13D, to all investors beneficially owning less than 20 percent of the outstanding class that have not acquired and do not hold the securities for the purpose of or with the effect of changing or influencing the control of the issuer of the securities. The purposes of the amendments are to improve the effectiveness of the beneficial ownership reporting scheme and to reduce the reporting obligations of passive investors.

**EFFECTIVE DATE:** The amendments are effective February 17, 1998.

**FOR FURTHER INFORMATION CONTACT:** Dennis O. Garris, Chief, Office of Mergers and Acquisitions, Division of Corporation Finance, Securities and Exchange Commission at (202) 942–2920, 450 Fifth Street N.W., Washington, D.C. 20549.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission (''Commission'') is adopting amendments to Regulation 13D–G [1] and Schedules 13D and 13G.[2] In addition, the Commission is adopting conforming amendments to Rule 16a–1 [3] under the Securities Exchange Act of 1934 (''Exchange Act'').

### I. Executive Summary

Today, for the first time, the Commission is permitting certain large shareholders to use the short-form Schedule 13G, rather than the long-form Schedule 13D, to report accumulations and changes in stock holdings. This expanded eligibility to file on Schedule 13G applies only to persons not seeking to acquire or influence ''control'' of the issuer and who own less than 20 percent of the class of securities (''Passive Investor'').[4] The existing reporting scheme imposed unnecessary disclosure obligations on persons whose acquisitions do not affect the control of issuers. The amendments adopted today will reduce the reporting obligations of these Passive Investors. The amendments also will improve the effectiveness of the beneficial ownership reporting scheme. The reduced number of Schedule 13D filings will allow the marketplace, as well as the staff of the Commission, to focus more quickly on acquisitions involving the potential to change or influence control.

Since a control purpose reflects the state of mind of a filing person and there are incentives to disclose less information, the Commission is imposing some safeguards on this new class of short-form filers:

- Initial Schedule 13G must be filed within 10 days (instead of year end);
- Prompt amendments are required every time the Passive Investor acquires more than an additional five percent;
- Loss of Schedule 13G-eligibility occurs when Passive Investor acquires 20 percent or more of the class; and,
- If the person no longer passively holds their shares or the person acquires 20 percent or more of the class, a Schedule 13D is due within ten days and the person is not permitted to vote the shares or acquire more shares during the period of time beginning from the change in investment purpose or the acquisition of 20 percent or more until ten days after the Schedule 13D is filed.

The Commission also is adopting related and clarifying amendments including the simplification of the Schedule 13G dissemination requirements to reflect the ready availability of those reports on the Commission's EDGAR system. Schedules 13G will no longer be required to be sent to the exchanges, since all Schedules 13D and 13G must now be filed electronically with the Commission.[5]

### II. Amendments to Regulation 13D–G

#### *A. Expansion of the Class of Investors Eligible To Report on Schedule 13G*

The Commission proposed the amendments adopted today on July 3, 1996.[6] The amendments are being adopted substantially as proposed with some important modifications. In addition to the two existing categories of Schedule 13G filers (''Qualified Institutional Investors'' [7] and ''Exempt Investors'' [8]), today's amendments create a third category (''Passive Investors''),[9] significantly expanding the classes of persons eligible to file on the short form. Under the amendments, all Passive Investors are permitted to use the short-form Schedule 13G.[10] Passive Investors choosing to report on Schedule 13G will file that schedule within 10 calendar days after acquiring beneficial ownership of more than five percent of a class of subject securities. Persons unable or unwilling to certify that they do not have a disqualifying purpose or effect because, for example, the possibility exists that they may seek to exercise or influence control, would be ineligible to file a Schedule 13G and would be required to file a Schedule

[1] Rules 13d–1, 13d–2, 13d–3, and 13d–7 [17 CFR 240.13d–1, 240.13d–2, 240.13d–3, and 240.13d–7].

[2] K 17 CFR 240.13d–101 and 240.240.13d–102.

[3] 17 CFR 240.16a–1.

[4] *See* fn. 9, infra.

[5] Schedules 13D and 13G are not required to be filed electronically with respect to securities of foreign private issuers. See Note to paragraph (c)(4) to 17 CFR 232.901.

[6] Exchange Act Release No. 37403 (July 7, 1996) (''Reproposing Release''). The comment letters, as well as a summary of the comments, are available from the Commission's Public Reference Room (File No. S7–16–96).

[7] The institutional investors include a broker or dealer registered under Section 15(b) of the Exchange Act [15 U.S.C. 78o(b)], a bank as defined in Section 3(a)(6) of the Exchange Act [15 U.S.C. 78c(a)(6)], an insurance company as defined in Section 3(a)(19) of the Exchange Act [15 U.S.C. 78c(a)(19)], an investment company registered under Section 8 of the Investment Company Act of 1940 [15 U.S.C. 80a–8], an investment adviser registered under Section 203 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 *et seq.*], an employee benefit plan or pension fund that is subject to the provisions of the Employee Retirement Income Security Act of 1974 [codified principally in 29 U.S.C. 1001–1461], and related holding companies and groups (collectively, ''institutional investors''). Rule 13d–1(b)(1)(ii) [17 CFR 240.13d–1(b)(1)(ii)].

[8] The term ''Exempt Investors'' refers to persons holding more than five percent of a class of subject securities at the end of the calendar year, but who have not made an acquisition subject to Section 13(d). For example, persons who acquire all their securities prior to the issuer registering the subject securities under the Exchange Act are not subject to Section 13(d) and persons who acquire not more than two percent of a class of subject securities within a 12-month period are exempted from Section 13(d) by Section 13(d)(6)(B), but in both cases are subject to Section 13(g). Section 13(d)(6)(A) exempts acquisitions of subject securities acquired in a stock-for-stock exchange which is registered under the Securities Act of 1933.

[9] The term ''Passive Investors'' is used in this release to refer to shareholders beneficially owning more than five percent of the class of subject securities and who can certify that the subject securities were not acquired or held for the purpose of and do not have the effect of changing or influencing the control of the issuer of such securities and were not acquired in connection with or as a participant in any transaction having such purpose or effect. *See* Rule 13d–1(c) and revised Item 10 of Schedule 13G. Shareholders that are unable to certify to this effect are considered to have, for purposes of this release, a ''disqualifying purpose or effect''.

[10] Rule 13d–1(c).

13D.[11] Qualified Institutional Investors remain eligible to file the short-form report on Schedule 13G within 45 calendar days after the calendar year end. Exempt Investors also will continue to file their initial Schedule 13G within 45 calendar days after the calendar year in which they became subject to Section 13(g) and new Rule 13d–1(d).

Even though a Passive Investor may report on Schedule 13G, it will be permitted to file a Schedule 13D instead. The fact that an investor can represent that it does not have a disqualifying purpose or effect but nevertheless chooses to file on a Schedule 13D may provide important information concerning the filing person's investment purpose.

*B. Filing Periods for Passive Investors Filing on Schedule 13G*

As adopted, Passive Investors choosing to file a Schedule 13G will file the initial schedule within 10 calendar days of crossing the five percent threshold. Requiring the filing within 10 days, rather than the 45 days following year end as is currently applicable to Qualified Institutional Investors and Exempt Investors, will provide more timely notice to the market and to investors of the existence of voting blocks that have the potential of affecting or influencing control of the issuer.

Although the Commission is adopting the initial reporting obligations for Passive Investors as proposed that are more stringent than those for Qualified Institutional Investors, the Commission is adopting a more liberal approach for amending Schedule 13G. The rule permits Passive Investors to amend in a manner similar, but more promptly than, Qualified Institutional Investors reporting on Schedule 13G.[12]

As proposed, Passive Investors would have been subject to the more stringent amendment requirements that currently apply to Schedule 13D filers. Seven commenters specifically addressed the proposed amendment requirements and five commenters believed that the proposals were too complex and overly cautious. Those commenters believed that the application of the more stringent amendment requirements to Passive Investors would significantly diminish the benefits of the proposals overall to Passive Investors and would be inconsistent with the Commission's intent to reduce the reporting obligations of Passive Investors. One commenter noted that if the Passive Investors have no intent to influence or change control of the issuer, then there is no substantially greater need to track the percentage changes in holdings of Passive Investors, and therefore they should be treated no differently than Qualified Institutional Investors. In contrast, other commenters argued that the proposed accelerated filing of these Schedule 13G amendments for Passive Investors is necessary to provide notice to investors, issuers, and to the market of voting blocks of securities that have the potential of affecting or influencing control of the issuer.

While the Commission appreciates that the beneficial ownership rules are already complex, separate amendment requirements for Passive Investors appear to be necessary to address these competing concerns raised by the commenters. The views of the commenters on the amendment issue suggest that neither the current 13D nor 13G approach would be appropriate. By requiring prompt reporting of more than five percent changes in position, the Commission believes that sufficient information will be provided to investors, issuers, and to the market regarding the changes in percentage ownership of Passive Investors. To further prevent any possible abuse in the use of Schedule 13G by investors that have a disqualifying purpose or effect, the Commission is adopting, as proposed, the ''cooling-off'' period upon a change in investment purpose and the same ''cooling-off'' period will apply upon acquiring 20 percent or more of the class.[13]

Accordingly, as adopted, Passive Investors must amend the Schedule 13G within 45 calendar days after the end of the calendar year to report any change in the information previously reported. Passive Investors also will amend the Schedule 13G during the year if they acquire greater than 10 percent of the subject securities. This amendment will be required to be filed ''promptly'' [14] upon acquiring greater than 10 percent. Between 10 percent and less than 20 percent, Passive Investors will be required to file additional amendments ''promptly'' during the year if they increase or decrease their beneficial ownership by more than five percent of the class.

These new amendment requirements for Passive Investors that acquire greater than 10 percent of the class are different than the amendment requirements for Qualified Institutional Investors that acquire greater than 10 percent. Qualified Institutional Investors have until 10 days after the month in which they acquired greater than ten percent to amend their Schedule 13G. Qualified Institutional Investors holding more than 10 percent have until 10 days after the month in which they increased or decreased their beneficial ownership by more than five percent. In each case, the Qualified Institutional Investor's beneficial ownership is computed as of the last day of the month. The Qualified Institutional Investors are permitted greater flexibility in filing amendments in recognition of the fact that Qualified Institutional Investors routinely buy and sell securities in the ordinary course of business and are less likely to abuse the process.

*C. 13D Filing Requirement and Cooling-Off Period for Changes in Investment Purpose or Effect*

When Qualified Institutional Investors and Passive Investors determine they hold the subject securities with a disqualifying purpose or effect, they must file a Schedule 13D no later than 10 calendar days after the change in investment purpose.[15] The Commission is adopting, as proposed, a ''cooling-off'' period that will begin with the change in investment purpose and last until the expiration of the tenth calendar day from the date of the filing of a Schedule 13D. During the cooling-off period, the reporting person is prohibited from voting or directing the voting of the subject securities or acquiring additional beneficial ownership of any equity securities of

[11] The Commission has revised, as proposed, the certification on the Schedule 13G for Qualified Institutional Investors to provide that such investors certify that the securities were acquired *and are held* in the ordinary course of business and were not acquired *and are not held* for the purpose of and do not have the effect of changing or influencing the control of the issuer of such securities and were not acquired *and are not held* in connection with or as a participant in any transaction having such purpose or effect (*emphasis added*). This amendment to the certification is to conform the language of the certification to amended Rule 13d–1(e).

[12] Amended Rule 13d–2(b) requires Qualified Institutional Investors to amend Schedule 13G 45 days after the end of each calendar year if, as of the end of such calendar year, there are any changes in the information reported in the previous filing on that Schedule. Further, under amended Rule 13d–2(c) if their beneficial ownership exceeds 10 percent of the class at the end of any month, an amendment would be required to be filed within 10 days after the end of that month, as well as within 10 days after the end of any month in which their ownership increases or decreases by more than five percent of such class.

[13] *See* Sections II.C. and II.D. infra.

[14] The determination of what constitutes ''promptly'' under Regulation 13D–G is based upon the facts and circumstances surrounding the materiality of the change in information triggering the filing obligation and the filing person's previous disclosures. Any delay beyond the date the filing reasonably can be filed may not be prompt. See *In the Matter of Cooper Laboratories, Inc.*, Release No. 34–22171 (June 26, 1985).

[15] Rule 13d–1(e).

the issuer or any person controlling the issuer.

Seven commenters specifically addressed the proposals regarding the Schedule 13D filing requirement upon a change in investment purpose or effect and the related cooling-off period. Three of those commenters supported the Schedule 13D filing requirement and cooling-off period as proposed. The other four commenters supported the concept of a cooling-off period but thought the period should be shortened. However, in light of the changes being adopted today to liberalize the amendment requirements for Passive Investors reporting on Schedule 13G, the Commission believes the 10 day cooling-off period, as adopted, is necessary and appropriate. The earlier commencement of the cooling-off period will encourage the prompt filing of a Schedule 13D.[16] The cooling-off period will prevent further acquisitions or the voting of the subject securities until the market and investors have been given time to react to the information in the Schedule 13D filing.

*D. Twenty-Percent Limit on Ownership Interest Reportable on Schedule 13G and Related Cooling-Off Period*

Under today's amendments, Passive Investor status is limited to holders of less than 20 percent of the class of subject securities. Upon acquiring 20 percent or more, the investor must report the acquisition on Schedule 13D within 10 calendar days.[17] Additionally, the investor will be subject to a ''cooling-off'' period commencing from the time the investor reaches the 20 percent threshold until ten calendar days after the filing of the Schedule 13D.[18] During this period, the investor will be prohibited from voting or directing the voting of the subject securities and from acquiring additional beneficial ownership in any equity securities of the issuer. This cooling-off period is the same period that applies to Passive Investors and Qualified Institutional Investors when they change their investment purpose. The Commission proposed a standstill [19] period upon the acquisition of 20 percent or more of the class. The Commission is adopting the cooling-off period in lieu of the standstill period at the 20 percent threshold in order to further prevent abuse of the liberal amendment requirements adopted today for Passive Investors and to simplify Regulation 13D–G.

Six commenters specifically addressed the proposal regarding the 20 percent limitation and related standstill period. A majority of those commenters supported the 20 percent limitation. One commenter believed the ownership limit should be lowered to 10%. Three commenters supported the standstill period as proposed. Two commenters believed that it would be unfair to Passive Investors to impose a limit on beneficial ownership reportable on Schedule 13G and to apply any standstill period. Those commenters believed that if an investor can make the passive certification, then it should be treated the same as Qualified Institutional Investors. The Commission believes that the 20 percent limitation and the cooling-off period adopted today are necessary and appropriate for prompt disclosure of sizeable blocks of securities because of the inherent control implications corresponding to such ownership positions held by persons that do not purchase securities in the ordinary course of business.[20]

The 20 percent limit applies only with respect to Passive Investors reporting on Schedule 13G pursuant to new Rule 13d–1(c). Qualified Institutional Investors and Exempt Investors are not subject to the 20 percent limitation because the Commission recognizes that institutions that purchase securities in the ordinary course of business may be burdened by a limitation on the amount of securities that can be reported on the short-form Schedule 13G. Further, the Commission believes that Schedule 13G strikes an appropriate balance between furnishing disclosure to the market and the burdens placed on such institutions.

*E. Re-establishing Schedule 13G Eligibility*

The amended rules allow persons who have lost their eligibility to file on Schedule 13G to re-establish their Schedule 13G-eligibility and again report on Schedule 13G.[21] Specifically, a Qualified Institutional Investor that has lost its Schedule 13G eligibility, because it is no longer a qualified entity under Rule 13d–1(b)(1)(ii) or cannot make the required certification, is allowed to switch back to Schedule 13G pursuant to the Qualified Institutional Investor provision [22] once it re-establishes its status under Rule 13d–1(b)(1)(ii) or can again make the necessary certification. Similarly, a Passive Investor that has lost its Schedule 13G-eligibility under Rule 13d–1(c), because it can no longer certify that it does not have a disqualifying purpose or effect or because it reached the 20 percent threshold, is able to switch back to Schedule 13G when it can once again make the certification or when its beneficial ownership falls below 20 percent. The Commission believes that investors and the market will be better informed if reporting persons are able to switch back to Schedule 13G after re-establishing their eligibility, since the filing of a Schedule 13D will be a clearer indicator of investors that currently have a disqualifying purpose or effect or investors that hold 20 percent or more of the class.

Once a Schedule 13D reporting person decides to switch to a Schedule 13G, the Schedule 13G would be filed to reflect that decision.[23] The filing of the Schedule 13G will be deemed to amend the Schedule 13D. Therefore, no formal amendment to the Schedule 13D will be required.

*F. Expansion of the Class of Qualified Institutional Investors*

1. Foreign Institutional Investors

Under the amended rules, the use of the short-form Schedule 13G pursuant to the Qualified Institutional Investor provisions of Rule 13d–1(b) will continue to be limited essentially to institutions such as brokers, dealers, investment companies, and investment advisers registered with the Commission, or regulated banks or insurance companies. The use of Schedule 13G by similar non-domestic institutions has been limited in the past to those institutions that have obtained an exemptive order from the Commission [24] or, under the current

[16] The sooner the Schedule 13D filing is made, the sooner the cooling-off period will end, since the cooling-off period ends 10 calendar days from the date the Schedule 13D is filed.

[17] Upon reaching the 20 percent limit, the investor is not required to amend its Schedule 13G in addition to filing the Schedule 13D.

[18] Rule 13d-1(f).

[19] The ''standstill'' period would have commenced upon acquiring 20 percent or more of the class and terminated upon the filing of the Schedule 13D. During the standstill period, the investor would have been prohibited from voting its securities or acquiring additional equity securities in the issuer.

[20] As stated in the Reproposing Release, the Commission does not intend these new rules to create a presumption that beneficial ownership of 20 percent or more indicates control or a control purpose. Further, no presumption is intended that beneficial ownership below 20 percent cannot indicate control or a control purpose. Indeed, the Commission believes that it would be unusual for an investor to be able to make the necessary certification of a passive investment purpose when beneficial ownership approaches 20 percent.

[21] Rule 13d–1(h).

[22] Rule 13d–1(b).

[23] The Schedule 13G would be filed as an initial Schedule 13G as opposed to an amendment even if the reporting person had reported on Schedule 13G before losing its Schedule 13G-eligibility.

[24] *See* Exchange Act Release No. 14692 (April 21, 1978) [43 FR 18484].

practice, a no-action position from the Division of Corporation Finance. The no-action relief was based on the requester's undertaking to grant the Commission access to information that would otherwise be disclosed in a Schedule 13D and the comparability of the foreign regulatory scheme applicable to the particular category of institutional investor.

The Commission is not expanding the list of qualified institutional investors to include foreign institutions. The Passive Investor provisions adopted today make Schedule 13G available to all investors that do not have a disqualifying purpose or effect, including foreign investors. These new provisions have more lenient filing requirements for amendments to Schedule 13G than as originally proposed.[25] Therefore, foreign institutional investors wanting to report on Schedule 13G should be able to rely on the passive investor provisions without significant difficulty. Any foreign institutional investor that would rather report on Schedule 13G as a Qualified Institutional Investor and does not want to rely on the Passive Investor provisions may continue to seek no-action relief from the staff under current practices.

2. State and Local Governmental Employee Benefit Plans

The Commission is expanding the list of Qualified Institutional Investors under Rule 13d–1(b)(1)(ii) to allow employee benefit plans maintained primarily for the benefit of state or local government employees to report on Schedule 13G. The Commission believes that these plans are now generally subject to fiduciary obligations and standards for investment that are substantially similar to those imposed by Employee Retirement Income Security Act of 1974 (''ERISA''). The Commission has revised the language in Rule 13d–1(b)(1)(ii)(F) to eliminate the phrase ''pension fund'' because such entities are included in the definition of employee benefit plan in Section 3(3) of ERISA.

The Commission is making a conforming change to the beneficial owner definition under Section 16 by amending Rule 16a–1(a)(1)(vi) to include state and local government employee benefit plans in the list of persons that are not deemed to be the beneficial owners of securities held for the benefit of third parties.

3. Savings Associations

Based upon the suggestions of commenters, the Commission is expanding the list of Qualified Institutional Investors under Rule 13d–1(b)(1)(ii) by adding new paragraph (H) to allow savings associations to report on Schedule 13G. Adding savings associations to the list of Qualified Institutional Investors codifies the staff no-action relief granted to *Columbia Savings and Loan* (June 15, 1987).

The Commission is making a conforming change to the Section 16 rules by adding new Rule 16a–1(a)(1)(viii) to include savings associations in the list of persons that are not deemed to be the beneficial owners of securities held for the benefit of third parties.

4. Church Plans

Also upon the suggestion of commenters, the Commission is expanding the list of Qualified Institutional Investors under Rule 13d–1(b)(1)(ii) by adding new paragraph (I) to allow church employee benefit plans to report on Schedule 13G. Adding church plans to the list of Qualified Institutional Investors is consistent with the treatment of church plans under the National Securities Markets Improvement Act of 1996[26] which exempts such plans from most federal securities regulation.

The Commission is making a conforming change to the Section 16 rules by adding new Rule 16a–1(a)(1)(ix) to include church plans in the list of persons that are not deemed to be the beneficial owners of securities held for the benefit of third parties.

5. Control Persons of Qualified Institutional Investors

The Commission is expanding the list of Qualified Institutional Investors under Rule 13d–1(b)(1)(ii) to allow control persons of Qualified Institutional Investors to report indirect beneficial ownership through the controlled entity on Schedule 13G. In order to use Schedule 13G, the control person must not own directly, or indirectly through an ineligible entity or affiliate, more than one percent of the subject company's stock and is not seeking to change or influence control of the subject company.[27]

The Commission is making a conforming change to the Section 16 rules by amending Rule 16a–1(a)(1)(vii) to include control persons of qualified institutions in the list of persons that are not deemed to be beneficial owners of securities held for the benefit of third parties.[28]

Four commenters have requested some form of relief or guidance on when beneficial ownership under Rule 13d–3 should be attributed among entities under common control. This issue arises in the case of a consolidated group of corporations under common control or in the case of a single entity that has separately managed businesses within the same legal entity. The Commission recognizes that certain organizational groups are comprised of many different business units that operate independently of each other. They may nevertheless have to aggregate beneficial ownership for Regulation 13D–G reporting purposes.[29] The need to aggregate may have the effect of requiring diverse business units to share sensitive information, when it is otherwise not necessary for business purposes.

Because the Rule 13d–3(a) definition of beneficial ownership includes persons who have both direct and indirect, as well as shared, voting and investment power, beneficial ownership by the business units, divisions or subsidiaries that hold the securities normally should be attributed to the parent entities that are in a control relationship to the shareholder entity. In those instances where the organizational structure of the parent and related entities are such that the voting and investment powers over the subject securities are exercised independently, attribution may not be required for the purposes of determining whether a filing threshold has been exceeded and the aggregate amount owned by the controlling persons.[30]

The determination as to whether the voting and investment powers are exercised independently from the parent and other related entities is based on the facts and circumstances. One circumstance in which beneficial ownership may not be required to be attributed to the parent entities is when these entities have in place certain informational barriers that ensure that the voting and investment powers are exercised independently from parent

[25] See Section II.B. above.

[26] Title V, Section 508.

[27] Rule 13d–1(b)(1)(ii)(G). This amendment codifies the no-action position set forth in *Warren E. Buffet & Berkshire Hathaway, Inc.*, (available December 5, 1986). Two commenters addressed this proposal and both commenters supported the proposal.

[28] This amendment under Section 16 codifies the interpretive position set forth in *Edward C. Johnson 3d.*, (available August 20, 1991).

[29] Since state takeover statutes and shareholder rights provisions are triggered by certain ''beneficial ownership'' or ''voting power'' thresholds—and may even use the beneficial ownership definition under Rule 13d–3—there is a concern that reporting ownership on an aggregate basis may trigger some of those provisions.

[30] Likewise, under these circumstances, attribution may not be required under Rule 16a–1(a)(1).

and affiliated entities.[31] This approach assumes that there will not be arbitrary or artificial separation of business units. One factor militating against separation would be participation in a common compensation pool that may align voting and investment decisions.

When informational barriers are relied upon to avoid attributing beneficial ownership to the parent entities, the various companies or groups should maintain and enforce written policies and procedures reasonably designed to prevent the flow of information to and from the other business units, divisions and entities that relate to the voting and investment powers over the securities. Those companies or groups also should obtain an annual, independent assessment of the operation of the policies and procedures established to prevent the flow of information among the related entities. The frequency in which an informational barrier is crossed with respect to a particular security (and therefore beneficial ownership would be attributed for that security) would raise questions regarding the efficacy of the informational barrier overall. However, an isolated instance in which this occurs would not necessarily impact the ownership treatment of securities of other issuers held by the reporting person.[32]

Finally, the parent entities should have no officers or directors (or persons performing similar functions) or employees (other than clerical, ministerial, or support personnel) who are involved in the exercise of the voting and investment powers in common with the shareholder.[33] For example, the existence of an independent investment committee would be evidence of an effective separation between the parent and the affiliated entities.

6. Investment Advisers Prohibited From Registering Under the Investment Advisers Act of 1940 Pursuant to Section 203A of That Act

Since the issuance of the Reproposing Release, Congress passed the National Securities Markets Improvement Act of 1996.[34] Among other things, the Act amended the Investment Advisers Act of 1940 (the ''Advisers Act'') by adding Section 203A, which prohibits certain investment advisers from registering with the Commission. For the most part, only advisers that have ''assets under management'' of $25 million or more, that advise registered investment companies, or that meet one of several exemptions from the prohibition on registration will be registered with the Commission. Other advisers will be regulated by state securities authorities. Currently, Rule 13d–1(b)(1)(ii)(E) restricts the use of Schedule 13G to investment advisers registered under Section 203 of the Advisers Act. Today the Commission is amending this rule to allow those investment advisers that are prohibited from registering under the Advisers Act pursuant to Section 203A of that Act to report on Schedule 13G as a Qualified Institutional Investor. Although these persons will not be subject to the federal regulatory regime for investment advisers, they will continue to buy and sell securities in the ordinary course of business and their businesses will be regulated by state law.

The Commission is making a conforming change to the Section 16 rules by amending Rule 16a–1(a)(1)(v) to include these investment advisers in the list of persons that are not deemed to be the beneficial owners of securities held for the benefit of third parties.

*G. Shareholder Communications and Beneficial Ownership Reporting*

The Commission requested comment as to whether the Section 13(d) reporting obligations restrict a shareholder's ability to engage in proxy related activities including the ability to use the proxy rule exemptions that were adopted in 1992 to facilitate communications among shareholders. The Commission asked whether relief, in addition to that adopted today, from Schedule 13D filing obligations with respect to soliciting activities is necessary and appropriate.

Only seven commenters responded to this request for comment. Two commenters believed that the Section 13(d) reporting obligations do not restrict the use of the proxy rule exemptions. The other five commenters believed that the reporting obligations do restrict the use of the proxy rule exemptions and all those commenters requested the Commission to provide various forms of relief or guidance on the matter. The two primary concerns raised by the five commenters are that activities exempt from the rules:

(i) May constitute the formation of a ''group'' under Rule 13d–5(b); or

(ii) May be construed as having the purpose or effect of changing or influencing the control of the issuer, and therefore would disqualify a person from eligibility to use Schedule 13G.

Although the Commission agrees that it can provide some further guidance in this area as discussed below, the Commission does not believe that the current beneficial ownership and group concepts unduly interfere with the type of shareholder communications contemplated by the proxy rule exemptions. The Commission believes that no further relief from the Section 13(d) filing obligations is required.

Specifically, the Commission believes that a shareholder who is a passive recipient of soliciting activities, without more, would not be deemed a member of a group under Rule 13d–5(b)(1) with persons conducting the solicitation. This would be true even where the soliciting activities result in the shareholder granting a revocable proxy. Similarly, when a shareholder solicits and receives revocable proxy authority (subject to the discretionary limits of Rule 14a–4), without more, that shareholder does not obtain beneficial ownership under Section 13(d) in the shares underlying the proxy.

The eligibility to use Schedule 13G by a shareholder who submits, supports, or engages in exempt soliciting activity in favor of a shareholder proposal submitted pursuant to Rule 14a–8, will depend on whether that activity was engaged in with the purpose or effect of changing or influencing control of the company. That determination normally would be based upon the specific facts and circumstances accompanying the solicitation and the vote. For that reason, the Commission is not able to provide extensive guidance on this issue.

In some cases the subject matter of the proposal or solicitation may be dispositive. For example, most solicitations regarding social or public

[31] The Commission adopted a similar approach in modifying the definition of ''affiliated purchaser'' under Regulation M. See Exchange Act Release No. 38067 (December 20, 1996) [62 FR 520]. Although informational barriers may serve to prevent the attribution of beneficial ownership to the parent entities, a group under Rule 13d–5(b) can still be formed among commonly controlled entities or with the parent entity that otherwise own securities in the issuer if these persons agree to act together for the purpose of acquiring, holding, voting or disposing of the subject securities. See *e.g., In the Matter of the Gabelli Group, Inc., et al,* Exchange Act Rel. No. 26005 (August 17, 1988).

[32] To the extent the informational barrier is crossed, beneficial ownership of that class of security should be reported on an aggregate basis by the entities sharing the information.

[33] The entities may have common officers, directors, and employees but those persons must not be involved in the exercise of the voting and investment powers or otherwise made aware of specific securities positions which are not publicly available. This factor would ensure that persons involved in the exercise of the voting and investment powers are not the same persons that would exercise such powers for the parent entity and therefore no information concerning the exercise of such powers would pass through the informational barrier.

[34] Pub. L. No. 104–290, 110 Stat. 3416 (1996) (codified in scattered sections of the United States Code).

interest issues (*e.g.*, environmental policies, apartheid, etc.) would not have the purpose or effect of changing or influencing control of the company. Corporate governance proposals, however, may or may not be control related. Proposals and soliciting activity relating to matters such as executive compensation, director pensions, and confidential voting normally would not prevent the use of a Schedule 13G. Even corporate governance issues that are presumably control related (*e.g.*, removal of a poison pill, opting out of state takeover statutes, or removal of staggered boards) might not have a disqualifying purpose or effect, depending on the circumstances. In contrast, most solicitations in support of a proposal specifically calling for a change of control of the company (*e.g.*, a proposal to seek a buyer for the company or a contested election of directors or a sale of a significant amount of assets or a restructuring of a corporation) would clearly have that purpose and effect. Some relevant factors to consider in assessing the purpose and effect of the type of proposal and related soliciting activity include:

(1) Does the filing person purchase securities in the ordinary course of business and by its nature does not seek to acquire control of companies?

(2) Was the proposal submitted or solicitation undertaken based upon the filing person's investment policies regarding good corporate governance for all the filer's portfolio companies, rather than to foster a control transaction for the particular company?

(3) Was the proposal submitted, or solicitation commenced, under circumstances where, given the subject matter of the particular proposal, it is likely to have the effect of facilitating a change of control of that particular company by another person or group (for example, the submission of a proposal to eliminate a staggered board that may facilitate a non-management solicitation, even by an unrelated third party)?

(4) Did the filing person commence an independent solicitation, exempt or otherwise, in favor of a proposal (the mere submission of a proposal under Rule 14a–8, without any independent soliciting activity, would be less likely to have a disqualifying purpose or effect)?

(5) Was the activity undertaken in opposition to a proposal put forth by management for shareholder approval, rather than in support of a proposal submitted by the filing person or some other shareholder?

Some proxy-related activities, by their nature, will have only limited effect on control of the company, and therefore should normally not cause a shareholder to lose its 13G eligibility. For example, voting in favor of an insurgent or making a voting announcement under Rule 14a–1(*l*)(2)(iv) in favor of a corporate governance proposal, without more, would not cause the loss of Schedule 13G eligibility, regardless of the subject matter. This is true even if the voting announcement supports a non-management shareholder proposal.

Although in many instances these determinations will be difficult and fact intensive, the Commission believes that the amendment adopted today that allows a person to re-establish its Schedule 13G eligibility [35] should serve to lessen the concern that a Schedule 13G filing person may lose its eligibility to report on Schedule 13G by engaging in or being a part of soliciting activities. Under new Rule 13d–1(h), if a reporting person loses its Schedule 13G eligibility due to its soliciting activities and is required to then report on Schedule 13D, the reporting person can switch back to Schedule 13G when the reporting person is no longer involved in the soliciting activities and can make the necessary certifications.[36]

## H. Related and Clarifying Amendments

The Commission also has eliminated the redundancies that existed in Regulation 13D–G regarding the filing and dissemination requirements by setting forth such requirements in one rule, Rule 13d–7(b). The Commission believes that Schedule 13G will become the primary reporting document for beneficial ownership, since a majority of investors will now file Schedule 13G in lieu of Schedule 13D. For this reason, the Commission proposed that the original and amendments to Schedules 13G be provided to each exchange where the security is traded as is currently required for Schedules 13D. However, since these filings will be made by persons without a disqualifying purpose or effect and are now required to be filed electronically on the Commission's Electronic Data Gathering and Retrieval System and therefore available in the electronic media, including on the Commission's World Wide Web site (http://www.sec.gov), the Commission is not adopting this proposal. Likewise, due to the electronic availability of Schedules 13D, the Commission is not adopting the proposal that a copy of the Schedule 13D and amendments thereto be provided to the National Association of Securities Dealers for securities quoted on the National Association of Securities Dealers Automated Quotation System (''NASDAQ'').[37]

Additionally, because of the electronic availability of filings and the fact that Schedules 13G do not represent control transactions, the Commission is further simplifying the dissemination requirements for all Schedule 13G filers by eliminating the requirement that Schedules 13G be sent to the exchanges. Accordingly, copies of all initial Schedules 13G and amendments filed with the Commission by Passive Investors, Qualified Institutional Investors, and Exempt Investors will only be required to be sent to the issuer and will not be required to be sent to any exchange or automated quotation system on which the securities are traded.

The amendments clarify the number of copies required to be filed to the extent paper filings may be made. The Commission notes that paper filings would be relatively rare, since all Schedules 13D and 13G must be filed in electronic format, unless they relate to the securities of a foreign private issuer or the filer has received a hardship exemption. Additionally, the rules have been revised to eliminate language regarding filing fees for Schedules 13D and 13G since such fees have been previously eliminated.[38] Finally, technical amendments to Schedules 13D and 13G have been made to conform the schedules to the proposed rules and to amend the filing deadlines and the number of copies in the instruction.

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[35] Rule 13d–1(h).

[36] On September 18, 1997, the Commission proposed amending Rule 14a–8 to provide an override mechanism from the exclusion of the shareholder proposal under Rule 14a–8 (c)(5) and (c)(7). See Release No. 34–39093. The 13G-eligibility of a shareholder who would use the proposed override mechanism to submit a shareholder proposal would be determined in the same manner as discussed in this section.

[37] Schedules 13D will, however, continue to be sent to each exchange on which the security is traded, which is a statutory requirement.

[38] *See* Exchange Act Release No. 7331 (September 24, 1996).

## III. Effects of Amendments to Regulation 13D-G

| ISSUE | OLD SCHEDULE 13D | NEW SCHEDULE 13D | OLD SCHEDULE 13G | NEW SCHEDULE 13G |
|---|---|---|---|---|
| **Person required to file** | Any person acquiring more than 5% of an equity security. Rule 13d-1(a). | No change. | Qualified Institutional Investors: Eligible institutions acquiring more than 5% of an equity security. Rule 13d-1(b).<br><br>Exempt Investors: Persons holding more than 5% of an equity security who are not subject to, or whose acquisitions are exempt from Section 13(d). Rule 13d-1(c). | Qualified Institutional Investors: Expanded to include (i) investment advisers registered under state law; (ii) control persons of qualified institutions; (iii) federal, state and local employee benefit plans; (iv) savings associations; and (v) church plans. Rule 13d-1(b)(1)(ii)(E)-(I).<br><br>Exempt Investors: No change.<br><br>Passive Investors: Any person acquiring more than 5% but less than 20% of an equity security and did not acquire such securities with a purpose or effect of changing or influencing control of the issuer or in a transaction having that effect. Rule 13d-1(c). |
| **Initial Filing** | Within 10 days after the acquisition. Rule 13d-1(a). | No change. | Qualified Institutional Investors: Within 45 days after calendar year in which the person holds more than 5% as of the year end, or within 10 days after the end of the first month in which the person's beneficial ownership exceeds 10% of the class of equity securities computed as of the end of the month. Rule 13d-1(b)(2).<br><br>Exempt Investors: Within 45 days after calendar year in which the person becomes obligated to file. Rule 13d-1(d). | Qualified Institutional Investors: No change.<br><br>Exempt Investors: No change.<br><br>Passive Investors: Within 10 days after the acquisition. Rule 13d-1(c). |

| ISSUE | OLD SCHEDULE 13D | NEW SCHEDULE 13D | OLD SCHEDULE 13G | NEW SCHEDULE 13G |
|---|---|---|---|---|
| **Amendment** | File promptly to reflect any material change including a change in investment purpose. An acquisition or disposition of beneficial ownership of securities equal to 1% or more of the class is deemed to be a material change. Rule 13d-2(a). | No change. | All Filers: Within 45 days after the end of the calendar year to report any change in the information. Rules 13d-2(b), (c) and (d).<br><br>Qualified Institutional Investors: In addition to the requirement stated above, within 10 days after the end of the first month in which the person's beneficial ownership exceeds 10% of the class computed as of the end of the month, and thereafter within 10 days of the end of any month in which the person's beneficial ownership increases or decreases more than 5% computed as of the end of the month. Rule 13d-1(b)(2) and 13d-2(c). | Qualified Institutional Investors: No change.<br><br>Exempt Investors: No change.<br><br>Passive Investors: Within 45 days after the end of the calendar year to report any change in the information. In addition, an amendment must be filed promptly upon the person's beneficial ownership exceeding 10% of the class and thereafter promptly upon the person's beneficial ownership increasing or decreasing more than 5%. Rule 13d-2(a). |
| **Purpose of Acquisition** | Disclose purpose of the transaction. Schedule 13D, Item 4. | No change. | Qualified Institutional Investors: Requires certification that the securities were acquired in the ordinary course of business, were not acquired for the purpose of and does not have the effect of changing or influencing control of the issuer, and were not acquired in a transaction having such an effect. Schedule 13G, Item 10 and Rule 13d-1(b).<br><br>Exempt Investors: No certification required. | Qualified Institutional Investors: Requires certification that the securities were acquired in the ordinary course of business, were not acquired for the purpose of and does not have the effect of changing or influencing control of the issuer, and were not acquired in a transaction having such an effect. Schedule 13G, Item 10 and Rule 13d-1(b).<br><br>Exempt Investors: No certification required.<br><br>Passive Investors: Same certification as for Qualified Institutional Investors except that acquisitions need not occur in the ordinary course of business. Schedule 13G, Item 10(b) and Rule 13d-1(c). |

| ISSUE | OLD SCHEDULE 13D | NEW SCHEDULE 13D | OLD SCHEDULE 13G | NEW SCHEDULE 13G |
|---|---|---|---|---|
| **Filing an initial Schedule 13D following previous filing on Schedule 13G.** | Qualified Institutional Investors: Promptly, but not more than 10 days after the person determines that it no longer holds the securities (i) in the ordinary course of business or (ii) without the purpose or effect of changing or influencing the control of the issuer, or within 10 days the person ceases to be an eligible institution. Rules 13d-1(b)(3) and (4).<br><br>Exempt Investors: Within 10 days upon making an acquisition subject to or not exempt from Section 13(d). | Qualified Institutional Investors: Within 10 days after the person determines that it no longer holds the securities (i) in the ordinary course of business or (ii) without the purpose or effect of changing or influencing control of the issuer or ceases to be an eligible institution. Rules 13d-1(e) and (g).<br><br>Exempt Investors: No change.<br><br>Passive Investors: Within 10 days of: (i) acquiring or holding the securities with the purpose or effect of changing or influencing control of the issuer or in a transaction having that effect (Rule 13d-1(e)), or (ii) the person's beneficial ownership equals or exceeds 20% of the class of equity securities. Rule 13d-1(f): | Not applicable. | Note: The filing person may refile on Schedule 13G once the disqualification has ended. |

| ISSUE | OLD SCHEDULE 13D | NEW SCHEDULE 13D | OLD SCHEDULE 13G | NEW SCHEDULE 13G |
|---|---|---|---|---|
| **Cooling-Off Period upon a change in investment purpose.** | Qualified Institutional Investors: 10 day period after the filing of a Schedule 13D because the person no longer holds the securities in the ordinary course of business or not with the purpose or effect of changing or influencing control of the issuer. Rule 13d-1(e). | Qualified Institutional Investors: Form the time the person no longer holds the securities without the purpose or effect of changing or influencing control of the issuer until the expiration of the tenth day after the date the Schedule 13D is filed. Rule 13d-1(e).<br><br>Passive Investors: Same as Qualified Institutional Investors. Rule 13d-1(e). | Not applicable. | Not applicable. |
| **Cooling-Off Period upon acquiring 20% or more of the class.** | Not applicable. | Passive Investors: From the time the person's beneficial ownership equals or exceeds 20% of the class until the expiration of the tenth day after the date the Schedule 13D is filed. Rule 13d-1(f). | Not applicable. | Not applicable. |

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## IV. Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis (''FRFA'') has been prepared in accordance with 5 U.S.C. 604 concerning the amendments to the beneficial ownership rules of Regulation 13D–G and related Schedules 13D and 13G and the amendments to Rule 16a–1(a)(1). The analysis notes that the principal effect of the revisions to Regulation 13D–G will be to reduce the disclosure obligations and associated costs to a majority of persons, including small entities, required to report beneficial ownership under Sections 13(d) and 13(g) of the Exchange Act and would eliminate the reporting obligations under Section 16 of the Exchange Act of certain governmental employee benefit plans, church plans, savings associations, investment advisers registered with the state and certain control persons of Qualified Institutional Investors. The analysis also indicates that there are no current federal rules that duplicate, overlap or conflict with the rules and forms to be amended.

As stated in the analysis, alternatives to the proposed amendments were considered, including, among other things, changing or simplifying the compliance or reporting requirements for small entities or exempting small entities from all requirements to file the schedules under Regulation 13D–G. As discussed in the analysis, there is no less restrictive alternative to the amendments that would serve the purposes of the beneficial ownership provisions of the Exchange Act. As originally proposed, Passive Investors would have been subject to more stringent amendment requirements that would have required amendments to be filed upon every one percent change in their beneficial ownership. However, in order to further reduce the reporting burdens of Passive Investors, the Commission is not adopting the proposed amendment requirements. Under the adopted rules, Passive Investors will only file amendments to their Schedules 13G upon greater than five percent changes in their beneficial ownership, as well as the annual amendment. Further, the Commission originally proposed that a copy of the Schedule 13G be sent to each exchange on which the security is traded and to NASDAQ if the security trades there. However, in order to simplify the dissemination requirements, copies of the Schedule 13G will not be required to be sent to any exchange or NASDAQ and will only continue to be sent to the issuer, as well as being filed with the Commission.

The Commission received no comments on the Initial Regulatory Flexibility Analysis (''IRFA'') prepared in connection with the proposing release. Five commenters indicated that the amendments would improve the effectiveness of the beneficial ownership reporting system and would reduce the reporting burdens of Passive Investors.

A copy of the FRFA may be obtained by contacting Dennis O. Garris in the Office of Mergers and Acquisitions, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

## V. Paperwork Reduction Act

The beneficial ownership reporting requirements are intended to provide investors and the subject issuer with information about accumulations of securities that may have the ability to change or influence control of the issuer. Before the amendments adopted today, Regulation 13D–G required that most persons file a detailed disclosure statement on the long-form Schedule 13D upon acquiring more than five percent of the subject securities. Certain qualified institutions (Qualified Institutional Investors) and persons who have not made an acquisition subject to Section 13(d) (Exempt Investors) may file the short-form disclosure statement Schedule 13G which requires less detailed disclosure than Schedule 13D.

The amendments make Schedule 13G available, in lieu of Schedule 13D, to all Passive Investors beneficially owning less than 20 percent. The Commission anticipates that the amendments will reduce the existing information collection requirements associated with Regulation 13D–G and Schedules 13D and 13G. The amendments will allow more individuals and non-institutional investors to file the short-form Schedule 13G. An important change from the proposed rules is that Passive Investors filing on Schedule 13G will be subject to the more liberal filing requirements with respect to amending the Schedule 13G. This change further reduces the reporting obligations of Passive Investors. Under the amended rules, Passive Investors must amend the Schedule 13G within 45 calendar days after the end of the calendar year to report any change in the information previously reported. Passive Investors also will promptly amend the Schedule 13G during the year if they acquire greater than 10 percent of the subject securities and thereafter upon an increase or decrease of greater than five percent. Further, in order to reduce the dissemination requirements for all persons filing Schedules 13G, the Commission is not adopting the proposed requirement that Schedules 13G be sent to each exchange on which the security is traded and to NASDAQ if the security trades on its system. As adopted, Schedules 13G will only be required to be sent to the issuer as well as being filed with the Commission.

In a recent study performed by the Office of Economic Analysis,[39] 63 percent of the Schedules 13D surveyed disclosed a passive investment purpose. Of the total surveyed, 53 percent disclosed a passive investment purpose and held less than 20 percent of the class of equity securities and therefore would be eligible to file on Schedule 13G under the new rules as Passive Investors.[40] It is estimated that 1646 Schedules 13D will be filed each year under the new rules.[41] Each Schedule 13D would impose an estimated burden of 14.75 hours for a total annual burden of 24,278.50 hours.[42] It is estimated that 9,044 Schedules 13G will be filed each year under the new rules.[43] Each Schedule 13G would impose an estimated burden of 10 hours for a total annual burden of 90,440 hours.

The Commission did not receive any Paper Work Reduction Act comments. Providing the information required by Schedules 13D and 13G is mandatory under Sections 13(d) and 13(g) and Regulation 13D–G of the Exchange Act. The information will not be kept confidential. Unless a currently valid OMB control number is displayed on the Schedules 13D and 13G, the Commission may not sponsor or

[38] See Exchange Act Release No. 7331 (September 24, 1996).

[39] The sample included 100 Schedules 13D filed from May 21, 1997 to June 2, 1997.

[40] In an earlier survey discussed in the Reproposing Release, 110 Schedules 13D filed in November and December 1994 were surveyed and 76 percent disclosed a passive investment purpose. Of the total surveyed, 63 percent disclosed a passive investment purpose and held less than 20 percent of the class of securities and would therefore be eligible to use Schedule 13G as Passive Investors.

[41] This estimated number of respondents is based upon the number of Schedules 13D filed in fiscal year 1996 and assumes no increase each year. This represents an estimated 53 percent reduction from the 3,503 Schedules 13D filed in fiscal year 1996. The estimated 53 percent reduction in Schedule 13D filings is based upon the sample data provided by the Office of Economic Analysis.

[42] Total annual burden hours are determined by multiplying the estimated average burden hours for completing the particular schedule by the estimated number of respondents that file that schedule.

[43] This number of respondents is based upon the number of Schedules 13G filed in fiscal year 1996 (7,187) plus the additional 1,857 respondents that are expected to file on Schedule 13G under the proposed rules and assumes no increase each year.

conduct or require response to an information collection. The OMB control number is 3235–0145. The collection is in accordance with the clearance requirements of 44 U.S.C. § 3507.

## VI. Cost-Benefit Analysis

No specific data was provided in response to the Commission's request regarding the costs and benefits associated with amending the filing requirements under Regulation 13D–G.[44] Making Schedule 13G available to all Passive Investors holding less than 20 percent of subject securities should significantly reduce the reporting costs incurred by those investors. Regulation 13D–G applies to any person that acquires more than five percent of a class of equity securities. The amendments will decrease the disclosure obligations of a significant number of persons currently required to file the long-form Schedule 13D. Based upon data provided by the Commission's Office of Economic Analysis, 53 percent of Schedules 13D studied by that office disclosed a passive investment purpose and held less than 20 percent of the class of securities and, therefore, would be eligible to file on Schedule 13G as Passive Investors under the amendments adopted today.[45]

An important change from the proposed rules is that Passive Investors filing on Schedule 13G will be subject to the more liberal filing requirements with respect to amending the Schedule 13G. This change further reduces the reporting obligations of Passive Investors. Commenters believed that the amendment requirements, as proposed, were too burdensome and that the potential benefit of the proposals to Passive Investors would have been substantially outweighed by the costs of monitoring their holdings and reporting the changes. Under the amended rules, Passive Investors must amend the Schedule 13G within 45 calendar days after the end of the calendar year to report any change in the information previously reported. Passive Investors also will promptly amend the Schedule 13G during the year if they acquire greater than 10 percent of the subject securities and thereafter upon an increase or decrease of greater than five percent. Further, in order to reduce the dissemination requirements for all persons filing Schedules 13G, the Commission is not adopting the proposed requirement that Schedules 13G be sent to each exchange on which the security is traded and to NASDAQ if the security trades on its system. As adopted, Schedules 13G will only be required to be sent to the issuer as well as being filed with the Commission.

The Commission does not believe that the amendments adopted today will have any burden on competition or capital formation since the purpose of the Regulation 13D–G filing requirements is only to report beneficial ownership in public companies. The amendments adopted today will increase market efficiency because with the reduced number of Schedule 13D filings the market will be able to focus more quickly on acquisitions involving the potential to change or influence control.

## VII. Statutory Basis and Text of Amendments

The amendments to Rules 13d–1, 13d–2, 13d–3 and 13d–7 and Schedules 13D and 13G and Rule 16a–1 are being adopted pursuant to the authority set forth in Sections 3(b), 13, 16 and 23 of the Securities Exchange Act of 1934.

## Lists of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

## Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. By amending § 240.13d–1 to revise paragraph (a), the introductory text of paragraph (b)(1), paragraphs (b)(1)(ii) and (b)(2), to remove paragraphs (b)(3) and (b)(4) and to redesignate paragraphs (c), (d), (e) and (f) as paragraphs (d), (i), (j) and (k), revise newly designated paragraph (d) and to add paragraphs (c), (e), (f), (g) and (h) to read as follows:

### § 240.13d–1 Filing of schedules 13D and 13G.

(a) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is specified in paragraph (i) of this section, is directly or indirectly the beneficial owner of more than five percent of the class shall, within 10 days after the acquisition, file with the Commission, a statement containing the information required by Schedule 13D (§ 240.13d–101).

(b)(1) A person who would otherwise be obligated under paragraph (a) of this section to file a statement on Schedule 13D (§ 240.13d–101) may, in lieu thereof, file with the Commission, a short-form statement on Schedule 13G (§ 240.13d–102), *Provided*, That:

(i) * * *

(ii) Such person is:

(A) A broker or dealer registered under section 15 of the Act (15 U.S.C. 78o);

(B) A bank as defined in section 3(a)(6) of the Act (15 U.S.C. 78c);

(C) An insurance company as defined in section 3(a)(19) of the Act (15 U.S.C. 78c);

(D) An investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8);

(E) Any person registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3) or under the laws of any state;

(F) An employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1001 *et seq.* (''ERISA'') that is subject to the provisions of ERISA, or any such plan that is not subject to ERISA that is maintained primarily for the benefit of the employees of a state or local government or instrumentality, or an endowment fund;

(G) A parent holding company or control person, provided the aggregate amount held directly by the parent or control person, and directly and indirectly by their subsidiaries or affiliates that are not persons specified in § 240.13d–1(b)(1)(ii)(A) through (I), does not exceed one percent of the securities of the subject class;

(H) A savings association as defined in Section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813);

[44] However, eight commenters expressed general views as to the costs and benefits associated with the amendments, without attempting to quantify either the costs or benefits. Five commenters stated that the proposed amendments would reduce passive filers' reporting burdens and associated costs. Seven commenters expressed concern that the proposed 20 percent limitation upon the availability of Schedule 13G to institutional investors that are passive would impose increased compliance burdens and costs without providing any useful information to the public. Finally, three commenters believed that requiring Schedule 13G filers to provide each exchange upon which the security is traded a copy of the Schedule would be overly burdensome because such information is not readily available. The proposal to provide copies of Schedule 13G to each exchange is not being adopted.

[45] The sample included 100 Schedules 13D filed from May 21, 1997 to June 2, 1997.

(I) A church plan that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 (15 U.S.C. 80a–3); and

(J) A group, provided that all the members are persons specified in § 240.13d–1(b)(1)(ii)(A) through (I); and

(iii) * * *

(2) The Schedule 13G filed pursuant to paragraph (b)(1) of this section shall be filed within 45 days after the end of the calendar year in which the person became obligated under paragraph (b)(1) of this section to report the person's beneficial ownership as of the last day of the calendar year, *Provided*, That it shall not be necessary to file a Schedule 13G unless the percentage of the class of equity security specified in paragraph (i) of this section beneficially owned as of the end of the calendar year is more than five percent; *However*, if the person's direct or indirect beneficial ownership exceeds 10 percent of the class of equity securities prior to the end of the calendar year, the initial Schedule 13G shall be filed within 10 days after the end of the first month in which the person's direct or indirect beneficial ownership exceeds 10 percent of the class of equity securities, computed as of the last day of the month.

(c) A person who would otherwise be obligated under paragraph (a) of this section to file a statement on Schedule 13D (§ 240.13d–101) may, in lieu thereof, file with the Commission, within 10 days after an acquisition described in paragraph (a) of this section, a short-form statement on Schedule 13G (§ 240.13d–102). *Provided*, That the person:

(1) Has not acquired the securities with any purpose, or with the effect of, changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect, including any transaction subject to § 240.13d–3(b);

(2) Is not a person reporting pursuant to paragraph (b)(1) of this section; and

(3) Is not directly or indirectly the beneficial owner of 20 percent or more of the class.

(d) Any person who is or becomes directly or indirectly the beneficial owner of more than five percent of any equity security of a class specified in paragraph (i) of this section and who is not required to file a statement under paragraph (a) of this section by virtue of the exemption provided by Section 13(d)(6)(A) or (B) of the Act (15 U.S.C. 78m(d)(6)(A) or 78m(d)(6)(B)), or because the beneficial ownership was acquired prior to December 22, 1970, or because the person otherwise (except for the exemption provided by Section 13(d)(6)(C) of the Act (15 U.S.C. 78m(d)(6)(C))) is not required to file a statement, shall file with the Commission, within 45 days after the end of the calendar year in which the person became obligated to report under this paragraph (d), a statement containing the information required by Schedule 13G (§ 240.13d–102).

(e)(1) Notwithstanding paragraphs (b) and (c) of this section and § 240.13d–2(b), a person that has reported that it is the beneficial owner of more than five percent of a class of equity securities in a statement on Schedule 13G (§ 240.13d–102) pursuant to paragraph (b) or (c) of this section, or is required to report the acquisition but has not yet filed the schedule, shall immediately become subject to §§ 240.13d–1(a) and 240.13d–2(a) and shall file a statement on Schedule 13D (§ 240.13d–101) within 10 days if, and shall remain subject to those requirements for so long as, the person:

(i) Has acquired or holds the securities with a purpose or effect of changing or influencing control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect, including any transaction subject to § 240.13d–3(b); and

(ii) Is at that time the beneficial owner of more than five percent of a class of equity securities described in § 240.13d–1(i).

(2) From the time the person has acquired or holds the securities with a purpose or effect of changing or influencing control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect until the expiration of the tenth day from the date of the filing of the Schedule 13D (§ 240.13d–101) pursuant to this section, that person shall not:

(i) Vote or direct the voting of the securities described therein; or

(ii) Acquire an additional beneficial ownership interest in any equity securities of the issuer of the securities, nor of any person controlling the issuer.

(f)(1) Notwithstanding paragraph (c) of this section and § 240.13d–2(b), persons reporting on Schedule 13G (§ 240.13d–102) pursuant to paragraph (c) of this section shall immediately become subject to §§ 240.13d–1(a) and 240.13d–2(a) and shall remain subject to those requirements for so long as, and shall file a statement on Schedule 13D (§ 240.13d–101) within 10 days of the date on which, the person's beneficial ownership equals or exceeds 20 percent of the class of equity securities.

(2) From the time of the acquisition of 20 percent or more of the class of equity securities until the expiration of the tenth day from the date of the filing of the Schedule 13D (§ 240.13d–101) pursuant to this section, the person shall not:

(i) Vote or direct the voting of the securities described therein, or

(ii) Acquire an additional beneficial ownership interest in any equity securities of the issuer of the securities, nor of any person controlling the issuer.

(g) Any person who has reported an acquisition of securities in a statement on Schedule 13G (§ 240.13d–102) pursuant to paragraph (b) of this section, or has become obligated to report on the Schedule 13G (§ 240.13d–102) but has not yet filed the Schedule, and thereafter ceases to be a person specified in paragraph (b)(1)(ii) of this section or determines that it no longer has acquired or holds the securities in the ordinary course of business shall immediately become subject to § 240.13d–1(a) or § 240.13d–1(c) (if the person satisfies the requirements specified in § 240.13d–1(c)), and §§ 240.13d–2 (a), (b) or (d), and shall file, within 10 days thereafter, a statement on Schedule 13D (§ 240.13d–101) or amendment to Schedule 13G, as applicable, if the person is a beneficial owner at that time of more than five percent of the class of equity securities.

(h) Any person who has filed a Schedule 13D (§ 240.13d–101) pursuant to paragraph (e), (f) or (g) of this section may again report its beneficial ownership on Schedule 13G (§ 240.13d–102) pursuant to paragraphs (b) or (c) of this section provided the person qualifies thereunder, as applicable, by filing a Schedule 13G (§ 240.13d–102) once the person determines that the provisions of paragraph (e), (f) or (g) of this section no longer apply.

* * * * *

3. By amending § 240.13d–2 by revising paragraphs (a), (b), and the note to § 240.13d–2; redesignating paragraph (c) as paragraph (e), and adding paragraphs (c) and (d) to read as follows:

**§ 240.13d–2 Filing of amendments to Schedules 13D or 13G.**

(a) If any material change occurs in the facts set forth in the Schedule 13D (§ 240.13d–101) required by § 240.13d–1(a), including, but not limited to, any material increase or decrease in the percentage of the class beneficially owned, the person or persons who were required to file the statement shall promptly file or cause to be filed with the Commission an amendment disclosing that change. An acquisition or disposition of beneficial ownership of securities in an amount equal to one percent or more of the class of securities shall be deemed ''material'' for purposes

of this section; acquisitions or dispositions of less than those amounts may be material, depending upon the facts and circumstances.

(b) Notwithstanding paragraph (a) of this section, and provided that the person filing a Schedule 13G (§ 240.13d–102) pursuant to § 240.13d–1(b) or § 240.13d–1(c) continues to meet the requirements set forth therein, any person who has filed a Schedule 13G (§ 240.13d–102) pursuant to § 240.13d–1(b), § 240.13d–1(c) or § 240.13d–1(d) shall amend the statement within forty-five days after the end of each calendar year if, as of the end of the calendar year, there are any changes in the information reported in the previous filing on that Schedule: *Provided, however*, That an amendment need not be filed with respect to a change in the percent of class outstanding previously reported if the change results solely from a change in the aggregate number of securities outstanding. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required unless the person thereafter becomes the beneficial owner of more than five percent of the class and is required to file pursuant to § 240.13d–1.

(c) Any person relying on § 240.13d–1(b) that has filed its initial Schedule 13G (§ 240.13d–102) pursuant to that paragraph shall, in addition to filing any amendments pursuant to § 240.13d–2(b), file an amendment on Schedule 13G (§ 240.13d–102) within 10 days after the end of the first month in which the person's direct or indirect beneficial ownership, computed as of the last day of the month, exceeds 10 percent of the class of equity securities. Thereafter, that person shall, in addition to filing any amendments pursuant to § 240.13d–2(b), file an amendment on Schedule 13G (§ 240.13d–102) within 10 days after the end of the first month in which the person's direct or indirect beneficial ownership, computed as of the last day of the month, increases or decreases by more than five percent of the class of equity securities. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required by this paragraph (c).

(d) Any person relying on § 240.13d–1(c) and has filed its initial Schedule 13G (§ 240.13d–102) pursuant to that paragraph shall, in addition to filing any amendments pursuant to § 240.13d–2(b), file an amendment on Schedule 13G (§ 240.13d–102) promptly upon acquiring, directly or indirectly, greater than 10 percent of a class of equity securities specified in § 240.13d–1(d), and thereafter promptly upon increasing or decreasing its beneficial ownership by more than five percent of the class of equity securities. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required by this paragraph (d).

* * * * *

**Note to § 240.13d–2**: For persons filing a short-form statement pursuant to Rule 13d–1 (b) or (c), see also Rules 13d–1 (e), (f), and (g).

4. By amending § 240.13d–3 by revising paragraph (d)(1)(ii) to read as follows:

**§ 240.13d–3 Determination of beneficial ownership.**

* * * * *

(d) * * *

(1) * * *

(ii) Paragraph (d)(1)(i) of this section remains applicable for the purpose of determining the obligation to file with respect to the underlying security even though the option, warrant, right or convertible security is of a class of equity security, as defined in § 240.13d–1(i), and may therefore give rise to a separate obligation to file.

* * * * *

5. By adding § 240.13d–7 to read as follows:

**§ 240.13d–7 Dissemination.**

One copy of the Schedule filed pursuant to §§ 240.13d–1 and 240.13d–2 shall be sent to the issuer of the security at its principal executive office, by registered or certified mail. A copy of Schedules filed pursuant to §§ 240.13d–1(a) and 240.13d–2(a) shall also be sent to each national securities exchange where the security is traded.

6. By amending § 240.13d–101 by revising the language preceding the first box on the cover page, revising the note on the cover page, revising Instruction (2) for the Cover Page, and in Item 7 revise the cite ''Rule 13d–1(f) ''(§ 240.13d–1(f))'' to read ''§ 240.13d–1(k)'' as follows:

**§ 240.13d–101 Schedule 13D—Information to be included in statements filed pursuant to § 240.13d–1(a) and amendments thereto filed pursuant to § 240.13d–2(a).**

* * * * *

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§ 240.13d–1(e), 240.13d–1(f) or 240.13d–1(g), check the following box.

* * * * *

**Note:** Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See § 240.13d–7(b) for other parties to whom copies are to be sent.

* * * * *

*Instructions for Cover Page*

* * * * *

(2) If any of the shares beneficially owned by a reporting person are held as a member of a group and the membership is expressly affirmed, please check row 2(a). If the reporting person disclaims membership in a group or describes a relationship with other person but does not affirm the existence of a group, please check row 2(b) [unless it is a joint filing pursuant to Rule 13d–1(k)(1) in which case it may not be necessary to check row 2(b)].

* * * * *

7. By amending § 240.13d–102 by revising the section heading, before the first paragraph on the cover page add a line for the date of the reportable event and boxes to check for the appropriate filing provision, revising Instruction (2) for the Cover Page, revising Instruction A following the Notes, revising Items 3, 4, 8, and 10, and revising the Note at the end of the schedule, to read as follows:

**§ 240.13d–102 Schedule 13G—Information to be included in statements filed pursuant to § 240.13d–1(b), (c) and (d) and amendments thereto filed pursuant to § 240.13d–2.**

* * * * *

---

(Date of Event Which Requires Filing of this Statement)

Check the appropriate box to designate the rule pursuant to which this Schedule is filed:

[ ] Rule 13d–1(b)

[ ] Rule 13d–(c)

[ ] Rule 13d–1(d)

* * * * *

*Instructions for Cover Page*

* * * * *

(2) If any of the shares beneficially owned by a reporting person are held as a member of a group and that membership is expressly affirmed, please check row 2(a). If the reporting person disclaims membership in a group or describes a relationship with other person but does not affirm the existence of a group, please check row 2(b) [unless it is a joint filing pursuant to Rule 13d–1(k)(1) in which case it may not be necessary to check row 2(b)].

* * * * *

*Notes*

* * * * *

*Instructions.* A. Statements filed pursuant to Rule 13d–1(b) containing the information required by this

schedule shall be filed not later than February 14 following the calendar year covered by the statement or within the time specified in Rules 13d–1(b)(2) and 13d–2(c). Statements filed pursuant to Rule 13d–1(c) shall be filed within the time specified in Rules 13d–1(c), 13d–2(b) and 13d–2(d). Statements filed pursuant to Rule 13d–1(c) shall be filed not later than February 14 following the calendar year covered by the statement pursuant to Rules 13d–1(d) and 13d–2(b).

* * * * *

*Item 3*. If this statement is filed pursuant to §§ 240.13d–1(b) or 240.13d–2(b) or (c), check whether the person filing is a:

(a) [ ] Broker or dealer registered under section 15 of the Act (15 U.S.C. 78o).

(b) [ ] Bank as defined in section 3(a)(6) of the Act (15 U.S.C. 78c).

(c) [ ] Insurance company as defined in section 3(a)(19) of the Act (15 U.S.C. 78c).

(d) [ ] Investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C 80a–8).

(e) [ ] An investment adviser in accordance with § 240.13d–1(b)(1)(ii)(E);

(f) [ ] An employee benefit plan or endowment fund in accordance with § 240.13d–1(b)(1)(ii)(F);

(g) [ ] A parent holding company or control person in accordance with § 240.13d–1(b)(1)(ii)(G);

(h) [ ] A savings associations as defined in Section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(i) [ ] A church plan that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 (15 U.S.C. 80a–3);

(j) [ ] Group, in accordance with § 240.13d–1(b)(1)(ii)(J).

If this statement is filed pursuant to § 240.13d–1(c), check this box. [ ]

*Item 4. Ownership*

Provide the following information regarding the aggregate number and percentage of the class of securities of the issuer identified in Item 1.

(a) Amount beneficially owned: _____.

(b) Percent of class: _____.

(c) Number of shares as to which the person has:

(i) Sole power to vote or to direct the vote _____.

(ii) Shared power to vote or to direct the vote _____.

(iii) Sole power to dispose or to direct the disposition of _____.

(iv) Shared power to dispose or to direct the disposition of _____.

*Instruction*. For computations regarding securities which represent a right to acquire an underlying security *see* § 240.13d–3(d)(1).

* * * * *

*Item 8. Identification and Classification of Members of the Group*

If a group has filed this schedule pursuant to § 240.13d–1(b)(1)(ii)(J), so indicate under Item 3(h) and attach an exhibit stating the identity and Item 3 classification of each member of the group. If a group has filed this schedule pursuant to § 240.13d–1(d), attach an exhibit stating the identity of each member of the group.

* * * * *

*Item 10. Certifications*

(a) The following certification shall be included if the statement is filed pursuant to § 240.13d–1(b):

By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were acquired and are held in the ordinary course of business and were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer of the securities and were not acquired and are not held in connection with or as a participant in any transaction having that purpose or effect.

(b) The following certification shall be included if the statement is filed pursuant to § 240.13d–1(c):

By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer of the securities and were not acquired and are not held in connection with or as a participant in any transaction having that purpose or effect.

* * * * *

**Note:** Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See § 240.13d–7(b) for other parties for whom copies are to be sent.

* * * * *

8. By amending § 240.16a–1 to revise paragraphs (a)(1)(i), (ii), (iii), (iv), (v), (vi) and (vii), redesignate paragraph (a)(1)(viii) as paragraph (a)(1)(xi) and to add paragraphs (a)(1)(viii), (ix) and (x) to read as follows:

**§ 240.16a–1 Definition of terms.**

* * * * *

(a) * * *

(1) * * *

(i) A broker or dealer registered under section 15 of the Act (15 U.S.C. 78o);

(ii) A bank as defined in section 3(a)(6) of the Act (15 U.S.C. 78c);

(iii) An insurance company as defined in section 3(a)(19) of the Act (15 U.S.C. 78c);

(iv) An investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8);

(v) Any person registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3) or under the laws of any state;

(vi) An employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1001 *et seq.* (''ERISA'') that is subject to the provisions of ERISA, or any such plan that is not subject to ERISA that is maintained primarily for the benefit of the employees of a state or local government or instrumentality, or an endowment fund;

(vii) A parent holding company or control person, provided the aggregate amount held directly by the parent or control person, and directly and indirectly by their subsidiaries or affiliates that are not persons specified in paragraphs (a)(1)(i) through (ix), does not exceed one percent of the securities of the subject class;

(viii) A savings association as defined in Section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(ix) A church plan that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 (15 U.S.C. 80a–3); and

(x) A group, provided that all the members are persons specified in § 240.16a–1(a)(1)(i) through (ix).

* * * * *

By the Commission.

Dated: January 12, 1998.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 98–1084 Filed 1–15–98; 8:45 am]

BILLING CODE 8010–01–P

federal register

Friday
January 16, 1998

# Part VI

# The President

## Proclamation 7062—Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Are Members of the Military Junta in Sierra Leone and Members of Their Families

Federal Register
Vol. 62, No. 11
Friday, January 16, 1998

# Presidential Documents

**Title 3—**

**The President**

**Proclamation 7062 of January 14, 1998**

## Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Are Members of the Military Junta in Sierra Leone and Members of Their Families

**By the President of the United States of America**

**A Proclamation**

In light of the refusal of the military junta in de facto control in Sierra Leone to permit the return to power of the democratically elected government of that country, and in furtherance of United Nations Security Council Resolution 1132 of October 8, 1997, I have determined that it is in the foreign policy interests of the United States to suspend the entry into the United States of aliens described in section 1 of this proclamation.

NOW, THEREFORE, I, WILLIAM J. CLINTON, by the power vested in me as President of the United States by the Constitution and the laws of the United States of America, including sections 212(f) and 215 of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182(f) and 1185), hereby find that the entry into the United States of aliens described in section 1 of this proclamation, as immigrants or nonimmigrants would, except as provided for in section 2 of this proclamation, be detrimental to the interests of the United States. I do therefore proclaim that:

**Section 1.** The entry into the United States as immigrants and nonimmigrants of members of the military junta in Sierra Leone and members of their families, is hereby suspended.

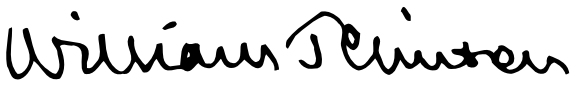
**Sec. 2.** Section 1 shall not apply with respect to any person otherwise covered by section 1 where the entry of such person would not be contrary to the interests of the United States.

**Sec. 3.** Persons covered by sections 1 and 2 shall be identified by the Secretary of State.

**Sec. 4.** This proclamation is effective immediately and shall remain in effect until such time as the Secretary of State determines that it is no longer necessary and should be terminated.

**Sec. 5.** The Secretary of State is hereby authorized to implement this proclamation pursuant to such procedures as the Secretary of State may establish.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of January, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.



[FR Doc. 98–1346
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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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