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Briefing on How To Use the Federal Register
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–148–AD; Amendment 39–9281; AD 95–13–01]

Airworthiness Directives; Air Bus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that requires inspections to determine the gap of the seat track joints at frame 64, and correction of discrepancies. This amendment also requires eventual modification of the seat tracks on all affected airplanes, which terminates the requirement of repetitively removing or repositioning the seats. This amendment is prompted by in-service inspection reports, which have revealed that a gap between the forward and aft seat track at frame 64 could exceed the tolerance limit due to a method used on the assembly line to control the position of the seat track. The actions specified by this AD are intended to ensure that the gap of the seat track joints do not exceed the tolerance limit and subsequently lead to separation of the passenger seats from the seat track under emergency landing conditions.

DATES: Effective July 24, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 24, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. 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: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2776; fax (206) 277–1181.

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 Airbus Model A320 series airplanes was published in the **Federal Register** on November 2, 1994 (59 FR 54849). That action proposed to require a one-time visual inspection to determine if a seat fitting having an x-plunger behind a z-stud is installed at the seat track joint at frame 64, and correction of discrepancies. That action also proposed to require modification of the seat tracks, which would terminate the requirement of repetitively removing or respositioning the seats whenever the cabin configuration is changed.

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

One commenter supports the proposed rule.

One commenter requests that the terminating modification be optional rather than required, since there is no increase in safety by requiring the terminating modification. The commenter states that the only benefit of requiring the terminating modification is that operators do not have to repetitively remove or reposition the seat when the internal configuration of the airplane is changed. The FAA does not concur. The FAA has determined that long term continued operational safety will be better assured by design change to remove the source of the problem, rather than by repetitively removing or repositioning the seats and other equipment when the interior configuration of the airplane is changed. Repetitive removal/repositioning of the seats over the longer term may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual actions, has led the FAA to consider placing less emphasis on repetitively removing or repositioning the seats and more emphasis on design improvements. The modification requirement of this AD is in consonance with these considerations.

The same commenter requests that the compliance time for accomplishment of the modification be extended from the proposed 30 months to 48 months. This commenter states that such an extension will allow the modification to be accomplished during a regularly scheduled ''D'' check. This commenter states that it would have to special schedule its fleet of airplanes in order to accomplish the proposed modification within the proposed compliance time; this would entail considerable additional expenses and schedule disruptions. The FAA does not concur with the commenter's request to extend the compliance time. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of installing the required modification during affected operators' scheduled maintenance holds. The manufacturer has advised that an ample number of required parts will be available for modification of the U.S. fleet within the proposed compliance period. However, under the provisions of paragraph (d) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

The same commenter also requests clarification regarding the structural modification procedures described in Airbus Service Bulletin A320–53–1088, which is referenced in the proposal as the appropriate source of service information. The FAA concurs that clarification is necessary and provides the following specific information: That service bulletin describes two procedures (Solution 1 and Solution 2) for accomplishing the subject modification, depending on the

magnitude of the gap. For a gap that is greater than 2.8 mm but less than 3.8 mm, Solution 1 involves removing the seat track couplings, adjusting the gap, and installing new couplings. For a gap that exceeds 3.8 mm, Solution 2 involves removing the couplings, seatrail beams, and cross beams; adjusting the gap; installing new couplings and a seatrail beam; and reinstalling the crossbeams. For further clarification purpose, the FAA has determined that, when referring to the subject modification, the phrase ''modification of the seat tracks'' is clearer than the phrase ''repositioning or replacing the seat tracks.'' Therefore, the text of the final rule has been revised accordingly throughout.

Additionally, this commenter requests that the FAA revise paragraph (b)(2) of the proposal to require marking the discrepant seat track junctions so that they can be identified visually. This commenter states that marking the discrepant junctions would be a secondary method to ensure that the aft attach point of an installed article is not installed at frame 64 after accomplishing the one-time inspection. This commenter notes that it has painted discrepant junctions with red paint. The FAA does not concur totally. Neither the referenced All Operators Telex 53–01 nor Airbus Service Bulletin A320–53–1088 contain any specific procedures for marking discrepant seat track junctions. However, operators are always permitted to perform actions beyond those strictly required by an AD. Therefore, if an operator elects to mark the discrepant junctions, in addition to removing/repositioning the seat or modifying the seat tracks, it is that operator's prerogative to do so. The FAA finds it appropriate not to revise the final rule, but to leave it to the individual operators' discretion whether or not to mark the discrepant junctions.

Further, this commenter requests that the FAA ensure that the proposed rule does not reference Airbus Service Bulletin A32–53–1088 as the appropriate source of service information for removing or repositioning the seat, if the seat track junction exceeds the given valve. The commenter states that Airbus All Operators Telex 53–01 is the appropriate source of service information for these procedures. The FAA points out that the relevant paragraph (b)(2)(i)(A) of the final does not mention Service Bulletin A32–53–1088, and it does reference All Operators Telex 53–01.

Since issuance of the NPRM, Airbus has issued Revision 3 of Service Bulletin A320–53–1088, dated March 27, 1994. This service bulletin is essentially identical to the original issue, but contains certain editorial changes. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in France. The FAA has revised the final rule to reference this revision of the service bulletin as the appropriate source of service information. (Required actions that were previously performed in accordance with earlier revisions of this same service bulletin will be considered to be in compliance with this AD.)

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this long-standing requirement.

Additionally, the FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

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

The FAA estimates that 85 airplanes of U.S. registry will be affected by this AD.

It will take approximately 7 work hours per airplane to accomplish the required inspection at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the inspection required by this AD on U.S. operators is estimated to be $35,700, or $420 per airplane.

It will take approximately 54 work hours per airplane to accomplish the required modification at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total impact of the modification required by this AD on U.S. operators is estimated to be $275,400, or $3,240.

Based on above figures, the total cost impact of the required inspection and modification on U.S. operators is estimated to be $311,100, or $3,660 per airplane.

The total 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.

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

§ 39.13 [Amended]

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

95–13–01 Airbus Industrie: Amendment 39–9281. Docket 94–NM–148–AD.

Applicability: Model A320 series airplanes; manufacturer's serial numbers 002 through 008 inclusive, 010 through 014 inclusive, 016 through 078 inclusive, 088 through 122 inclusive, 124 through 179 inclusive, 183 through 194 inclusive, 196 through 228 inclusive, 230 through 251 inclusive, and 253 through 255 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the passenger seats from the seat track during an emergency landing, accomplish the following:

(a) Within 450 flight cycles after the effective date of this AD, perform a visual inspection to determine if a seat fitting having an x-plunger behind a z-stud is installed at the seat track joint at frame 64, in accordance with Airbus All Operator Telex (AOT) 53–01, dated August 27, 1992.

(b) If such a seat fitting is installed, prior to further flight, measure the gap between the forward and aft seat tracks at frame 64, in accordance with the Airbus AOT 53–01, dated August 27, 1992.

(1) If the gap is less than or equal to 2.8 mm, prior to further flight, apply sealing material at the seat tracks, in accordance with the AOT.

(2) If the gap is greater than 2.8 mm, prior to further flight, accomplish the requirements of either paragraph (b)(2)(i) or (b)(2)(ii) of this AD, as applicable.

(i) For airplanes equipped with passenger seats at frame 64: Accomplish either paragraph (b)(2)(i)(A) or (b)(2)(i)(B) of this AD:

(A) Remove or reposition the seat in accordance with Airbus AOT 53–01, dated August 27, 1992. Thereafter, repeat the removal or repositioning whenever the cabin configuration is changed until the accomplishment of paragraph (c) of this AD. Or

(B) Modify the seat tracks in accordance with Airbus Service Bulletin A320–53–1088, Revision 3, dated March 27, 1994. Such modification constitutes terminating action for the requirements of this AD.

Note 2: Modification of the seat tracks prior to the effective date of this amendment in accordance with Airbus Service Bulletin A320–53–1088, original issue through Revision 2, is considered acceptable for compliance with the applicable actions specified in this paragraph.

(ii) For airplanes equipped with equipment other than passenger seats at frame 64: Prior to further flight, correct the discrepancy in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(c) Within 30 months after the effective date of this AD, modify the seat tracks, in accordance with Airbus Service Bulletin A320–53–1088, Revision 3, dated March 27, 1994. Accomplishment of this modification constitutes terminating action for the requirements of this AD.

Note 3: Modification of the seat tracks prior to the effective date of this amendment in accordance with Airbus Service Bulletin A320–53–1088, original issue through Revision 2, is considered acceptable for compliance with the applicable actions specified in this paragraph.

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with 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.

(f) The actions shall be done in accordance with All Operators Telex 53–01, dated August 27, 1992, or Airbus Service Bulletin A320–53–1088, Revision 3, dated March 27, 1994; as applicable. Revision 3 of Airbus Service Bulletin A320–53–1088 contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 4–6, 12, 13, 17, 29, 30, 45, 46, 53, 61, 62, 77, 78, 86, 93, 94, 102, 109, 110, 118, 125, 132, 139, 149, 153, 164.	3	March 27, 1994.
2, 13A, 13B, 14, 17A, 17B, 18.	2	November 22, 1993.
3, 8, 11, 15, 16, 19, 20, 21–28, 31–44, 47–52, 54–60, 63–76, 79–85, 87–92, 95–101, 103–108, 111–117, 119–124, 126–131, 133–138, 140–148, 150–152, 154–163.	Original	May 10, 1993.
7, 9, 10, 19A, 20A. .	1	August 16, 1993.

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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on July 24, 1995.

Issued in Renton, Washington, on June 12, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14769 Filed 6–22–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 94–NM–181–AD; Amendment 39–9278; AD 95–12–25]

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9, DC–9–80, and C–9 (military) series airplanes, and Model MD–88 airplanes. This amendment requires an inspection to detect chafing

on the FIREX pipe assembly of the number one engine; and either repair of chafed pipe assemblies or replacement of the chafed pipe assemblies with new pipe assemblies; and modification of the FIREX and the pneumatic sense pipe assembly clamp marriage. This amendment is prompted by reports of incidents in which the pneumatic sense pipe chafed against the FIREX supply pipe of the number one engine. The actions specified by this AD are intended to prevent the chafing of the FIREX supply pipe, which could result in a hole in the pipe and subsequently prevent the proper distribution of the fire extinguishing agent within the nacelle in the event of a fire.

DATES: Effective July 24, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 24, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). 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 FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (310) 627–5245; fax (310) 627–5210.

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 McDonnell Douglas Model DC–9, DC–9–80, and C–9 (military) series airplanes, and Model MD–88 airplanes was published in the **Federal Register** on December 8, 1994 (59 FR 63275). That action proposed to require inspection to detect chafing on the FIREX pipe assembly of the number one engine; and either replacement of the chafed pipe assemblies with new pipe assemblies and modification of the FIREX and the pneumatic sense pipe assembly clamp marriage, or repair of the chafed pipe assemblies.

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

One commenter supports the proposed rule.

Two commenters request that the compliance time for accomplishment of the inspection be extended from the proposed 8 months to 12 months. This will allow the inspection to be accomplished during the time of a regularly scheduled ''C'' check. One commenter considers that adoption of the proposed compliance time of 8 months would result in an additional expense to operators to schedule special times for the accomplishment of this inspection. The FAA does not concur with the commenters' request to extend the compliance time for the inspection requirements. In developing an appropriate compliance time for this action, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the inspection. In consideration of these items, as well as the several reports of chafing of the FIREX supply pipe assembly found on in-service airplanes, the FAA has determined that 8 months represents the maximum interval of time allowable wherein the inspection can reasonably be accomplished and an acceptable level of safety can be maintained. However, paragraph (b) of the final rule does provide affected operators the opportunity to apply for an adjustment of the compliance time if data are presented to justify such an adjustment.

One commenter states that paragraph (a)(1) of the proposed rule seems to offer an option of not modifying the clamping configuration if repair is needed. The commenter requests that paragraph (a)(1) be changed to read, ''* * * either replace the chafed pipe assemblies with new pipe assemblies or repair chafed pipe assemblies; and modify the FIREX * * *'' for clarification purposes. The FAA concurs. Further review of McDonnell Douglas Service Bulletin 26–25, which is referenced in the final rule as the appropriate source of service information, indicates that the repair procedures [described in paragraph 2.C.(2) of the service bulletin] include modification of the clamping configuration. Therefore, the modification is part of the repair, and is not optional. The FAA has revised paragraph (a)(1) of the final rule to clarify this modification requirement accordingly. Since this revision just clarifies a requirement of the rule, the FAA finds that it does not pose an increased burden on any operator.

One commenter requests that Model DC–9 series airplanes that are not equipped with a ventral stair be excluded from the applicability of the proposed rule. The commenter states that these airplanes do not have a pipe assembly having part number P/N 7914299–521 or 7914299–524; these pipe assemblies are referenced in Revision 1 of the service bulletin that is cited in the proposal as the appropriate source of service information. The FAA concurs. Since issuance of the proposal, the FAA has reviewed and approved Revision 2 of McDonnell Douglas DC–9 Service Bulletin 26–25, dated April 18, 1995. The procedures described in Revision 2 are identical to those described in Revision 1 , but include minor editorial changes. However, Revision 2 revises the effectivity listing of the service bulletin by removing 544 non-ventral stair Model DC–9 series airplanes. Accordingly, the applicability of the final rule has been revised to include only those airplanes listed in Revision 2 of the service bulletin. Additionally, the economic impact information, below, has been revised to reduce the total cost impact by the amount of costs applicable to the 544 airplanes that have been deleted from the applicability of the final rule. Further, the final rule has been revised to reference Revision 2 of the service bulletin as an additional source of service information.

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

There are approximately 1,410 Model DC–9, DC–9–80, and C–9 (military) series airplanes, and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 553 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The cost of required parts will be nominal. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $33,180, or $60 per airplane.

The total 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.

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

§ 39.13 [Amended]

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

95–12–25 McDonnell Douglas: Amendment 39–9278. Docket 94–NM–181–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes; Model MD–88 airplanes; and Model C–9 (Military) series airplanes; as listed in McDonnell Douglas DC–9 Service Bulletin 26–25, Revision 2, dated April 18, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the chafing of a hole in the FIREX supply pipe of the number one engine, which could prevent the proper distribution of the fire extinguishing agent within the nacelle in the event of a fire, accomplish the following:

(a) Within 8 months after the effective date of this AD, perform an inspection to detect chafing of the FIREX pipe assembly of the number one engine, in accordance with McDonnell Douglas DC–9 Service Bulletin 26–25, Revision 1, dated September 30, 1994, or Revision 2, dated April 18, 1995.

(1) If any chafing is detected, prior to further flight, accomplish paragraph (a)(1) and (a)(2) of this AD in accordance with the service bulletin. Where there are differences between the requirements of this AD and the procedures specified in the service bulletin, the AD prevails.

(i) Either repair chafed pipe assemblies or replace the chafed pipe assemblies with new or serviceable pipe assemblies. And

(ii) Modify the FIREX and the pneumatic sense pipe assembly clamp marriage.

(2) If no chafing is detected, prior to further flight, modify the FIREX and the pneumatic sense pipe assembly clamp marriage in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), 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, Los Angeles ACO.

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

(c) 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.

(d) The inspection, replacement, modification, and repair shall be done in accordance with McDonnell Douglas DC–9 Service Bulletin 26–25, Revision 1, dated September 30, 1994, or McDonnell Douglas DC–9 Service Bulletin 26–25, Revision 2, dated April 18, 1995. 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 McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 24, 1995.

Issued in Renton, Washington, on June 9, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14630 Filed 6–22–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–ANE–18; Amendment 39–9282; AD 95–08–10]

Airworthiness Directives; Teledyne Continental Motors (TCM) Model TSIO–360 and LTSIO–360 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This document publishes in the **Federal Register** Airworthiness Directive (AD) 95–08–10 that was sent previously to all known U.S. owners and operators of Teledyne Continental Motors (TCM) Model TSIO–360 E, EB, F, FB, G, GB, KB, LB, MB, and Model LTSIO–360 E, EB, and KB reciprocating engines by individual letters. This AD requires replacement of the suspect turbocharger check valves prior to further flight, and prohibits special flight permits. This amendment is prompted by three reported engine failures caused by incorrectly assembled turbocharger oil outlet check valves, resulting in an improperly expanded rivet that held the check valve flapper assembly together as one unit. The actions specified by this AD are intended to prevent complete engine failure due to an incorrectly assembled turbocharger oil outlet check valve.

DATES: Effective July 10, 1995, to all persons except those persons to whom it was made immediately effective by

priority letter AD 95–08–10, issued on April 6, 1995, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 10, 1995.

Comments for inclusion in the Rules Docket must be received on or before August 22, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–18, 12 New England Executive Park, Burlington, MA 01803–5299.

The applicable service information may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama, 36601, telephone (334) 438–3411, fax (334) 432–2922. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, GA, 30337–2748; telephone (404) 305–7371, fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: On April 6, 1995, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 95–08–10, applicable to Teledyne Continental Motors (TCM) Model TSIO–360 E, EB, F, FB, G, GB, KB, LB, MB, and Model LTSIO–360 E, EB, and KB reciprocating engines, which requires removal of suspect turbocharger oil outlet check valves. That action was prompted by three reported cases of check valve failures, two of which resulted in complete loss of engine power. The three reported failures were caused by incorrectly assembled turbocharger oil outlet check valves, resulting in an improperly expanded rivet which held the check valve flapper assembly together as one unit. The improperly expanded rivet allowed the rivet, washer, retainer, and seal components to separate and shift within the check valve unit.

One reported case showed that a part of the flapper assembly blocked the oil flow to the scavenge pump, and resulted in engine failure. Another reported case showed that the scavenge pump was disabled when one part of the flapper assembly shifted through the unit, again resulting in engine failure. These failures occurred early in the life of the check valve, ranging from one hour to 40 hours total time since new.

The incorrectly assembled check valves were manufactured between August 1, 1994, through March 20, 1995. Accordingly, all have date code ink stamps of either A3Q94, A4Q94, or A1Q95, indicating they were manufactured either during the third quarter of 1994, the fourth quarter of 1994, or the first quarter of 1995. Since an incorrectly assembled check valve can not be visually identified by other than by this date code, this AD must consider all check valves with these date codes as suspect, and require their removal prior to further flight. This condition, if not corrected, could result in damage to the oil scavenge pump, internal engine damage and subsequent loss of complete engine power.

The FAA has reviewed and approved the technical contents of Teledyne Continental Motors (TCM) Critical Service Bulletin (CSB) 95–1A, Revision A, dated April 5, 1995, that describes inspection and replacement of suspect oil outlet check valves.

Since the unsafe condition described is likely to exist or develop on other engines of the same type design, the FAA issued priority letter AD 95–08–10 to prevent damage to the oil scavenge pump, internal engine damage and subsequent loss of complete engine power. The AD requires removal prior to further flight, of suspect turbocharger oil outlet check valves. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on April 6, 1995, to all known U.S. owners and operators of Teledyne Continental Motors (TCM) Model TSIO–360 E, EB, F, FB, G, GB, KB, LB, MB, and Model LTSIO–360 E, EB, and KB reciprocating engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of part 39 of the Federal Aviation Regulations (14 CFR part 39) to make it effective to all persons.

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 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 in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–ANE–18.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and 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. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

95–08–10 Teledyne Continental Motors: Amendment 39–9282. Docket 95–ANE–18.

Applicability: Teledyne Continental Motors (TCM) engine Model TSIO–360 E, EB, F, FB, G, GB, KB, LB, MB, and Model LTSIO–360 E, EB, and KB reciprocating engines with turbocharger oil outlet check valve, TCM part number (P/N) 641068, shipped directly or indirectly from the manufacturer on or after August 1, 1994. These check valves are installed on but not limited to the following serial numbered engines:

New engine model TSIO–360–FB, serial number (S/N) 318019; new engine model TSIO–360–KB, S/N 320223, 320229, 320233, through 320235, 320239, 320242 through 320250, 320254 through 320259, 320261, 320262, 320264, 320266, 320292, 320293; new engine model LTSIO–360–KB, S/N 319226, 319232, 319235 through 319237, 319241, 319244 through 319246, 319248 through 319253, 319257, 319258, 319260 through 319268, 319270, 319271, 319273, 319297, 319322; rebuilt engine model TSIO–360–E, S/N 225140–R; rebuilt engine model TSIO–360–EB, S/N 265937–R, 265938–R, 265942–R through 265944–R, 265946–R through 265968–R, 265970–R through 265973–R, 265975–R, 265977–R through 265982–R; rebuilt engine model LTSIO–360–E, S/N 225648–R; rebuilt engine model LTSIO–360–EB, S/N 266471–R, 266480–R, 266482–R 266486–R, 266487–R, 266489–R through 266495–R, 266497–R through 266499–R, 807251–R through 807254–R, 807256–R through 807259–R, 807261–R through 807265–R, 807267–R, 807268–R, 807271–R through 807275–R, 807276–R; rebuilt engine model TSIO–360–F, S/N 232814–R through 232817–R; rebuilt engine model TSIO–360–FB, S/N 281183–R, 281187–R, 281189–R, 281190–R, 281193–R through 281197–R, 281199–R, 299501–R through 299523–R, 299525–R through 299528–R, 299532–R; rebuilt engine model TSIO–360–KB, S/N 268192–R, 268195–R through 268201–R, 268205–R through 268207–R; rebuilt engine model LTSIO–360–KB, S/N 268428–R, 268430–R, 268431–R, 268433–R, 268434–R, 268436–R, 268437–R, 268440–R through 268445–R; rebuilt engine model TSIO–360–LB, S/N 247257–R, 247259–R, 247260–R, 247262–R, 247267–R through 247271–R, 247273–R through 247275–R; and rebuilt engine model TSIO–360–MB, S/N 279245–R through 279247–R, 279249–R, 279250–R.

These engines are installed on but not limited to: Mooney Model M20K, Piper Models PA28–201T, PA28R–201T, PA28RT–201T, PA34–200T and PA34–220T aircraft.

Note: This AD applies to each engine 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 engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine failure due to incorrectly assembled turbocharger oil outlet check valve, which could result in complete engine failure, accomplish the following:

(a) Prior to further flight, determine if the turbocharger oil outlet check valve has been installed or repaired on or after August 1, 1994. This AD is not applicable to engines that did not have the turbocharger oil outlet check valve installed or repaired on or after August 1, 1994.

(b) Prior to further flight, inspect the turbocharger oil outlet check valve, TCM P/N 641068, in accordance with section B of Teledyne Continental Motors (TCM) Critical Service Bulletin (CSB) 95–1A, Revision A, dated April 5, 1995, and replace any check valve with an ink stamped date code of A3Q94, A4Q94 or A1Q95, or with no readable date code, with a serviceable check valve as defined in paragraph (c) of this AD.

(c) For the purpose of this AD, serviceable turbocharger oil outlet check valve is defined as one with a date stamp code indicating that it was manufactured before July 1, 1994, i.e., A2Q94, or earlier, or that it was manufactured after March 31, 1995, i.e., A2Q95, or later.

(d) Install replacement valve in the turbocharger oil outlet line with the flow arrow on the valve body pointing in the direction of oil flow toward the scavenge pump in accordance with section B of TCM CSB95–1A, Revision A, dated April 5, 1995.

(e) An alternative method of compliance that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Atlanta Aircraft Certification Office.

(f) Special flight permits may not be issued.

(g) Copies of the applicable service information may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama, 36601, telephone (334) 438–3411, fax (334) 432–2922.

(h) The turbocharger oil outlet check valve inspections shall be done in accordance with the following service bulletin:

Document No.	Pages	Revision	Date
TCM CSB95–1A.	1, 2	A	April 5, 1995.

Total pages: 2.

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 Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama, 36601, telephone (334)438–3411, fax (334) 432–2922. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective July 10, 1995, to all persons except those persons to whom it was made immediately effective by priority letter AD 95–08–10, issued April 6, 1995, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on June 12, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–15151 Filed 6–22–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–CE–27–AD; Amendment 39–9283; AD 95–13–02]

Airworthiness Directives; Twin Commander Aircraft Corporation 685, 690, and 695 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that

applies to certain Twin Commander Aircraft Corporation (Twin Commander) 685, 690, and 695 series airplanes. This action requires initially inspecting the vertical stabilizer for cracks, modifying any cracked vertical stabilizer, and, if not cracked, either repetitively inspecting or modifying the vertical stabilizer. Several reports of the vertical stabilizer cracking in different areas prompted this action. The actions specified by this AD are intended to prevent failure of the vertical stabilizer as a result of cracking, which, if not detected and corrected, could result in loss of control of the airplane.

DATES: Effective July 22, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 22, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from the Twin Commander Aircraft Corporation, 19010 59th Drive, N.E., Arlington, Washington 98223. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. David D. Swartz, Aerospace Engineer, FAA, Northwest Mountain Region, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone (206) 227–2624; facsimile (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Twin Commander Models 685, 690, 690A, 690B, 690C, 690D, 695, and 695A airplanes was published in the **Federal Register** on February 1, 1995 (60 FR 6045). The action proposed to require initially inspecting the vertical stabilizer for cracks, modifying any cracked vertical stabilizer, and, if not cracked, either repetitively inspecting or modifying the vertical stabilizer. Accomplishment of the proposed actions would be in accordance with Twin Commander Service Bulletin No. 218, dated May 19, 1994, including Revision Notices 1 and 2, dated July 11, 1994, and September 23, 1994, respectively.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 469 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 10 workhours per airplane to accomplish the required inspection, and that the average labor rate is approximately $60 an hour. Parts to accomplish the required inspection cost approximately $200 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $375,200. This figure does not take into account the cost of repetitive inspections or the cost of any modifications that may be needed based on the inspection results. The FAA has no way of determining how many vertical stabilizers may be cracked and need modification, or how many repetitive inspections each owner/operator may incur.

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 copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

95–13–02 Twin Commander Aircraft Corporation: Amendment 39–9283; Docket No. 94–CE–27–AD.

Applicability: The following airplane models and serial numbers, certificated in any category, that do not have the vertical stabilizer modified in accordance with the ACCOMPLISHMENT INSTRUCTIONS: PART II—MODIFICATION section of Twin Commander Service Bulletin (SB) No. 218, dated May 19, 1994, including Revision Notices 1 and 2, dated July 11, 1994, and September 23, 1994, respectively:

Model	Serial numbers
685	12000 through 12066.
690	11000 through 11079.
690A	11100 through 11344.
690B	11350 through 11566.
690C	11600 through 11735.
690D	15001 through 15042.
695	95000 through 95084.
695A	96001 through 96100.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required upon the accumulation of 2,000 hours time-in-service (TIS) on a vertical stabilizer or within the next 50 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter as indicated in the body of this AD.

To prevent failure of the vertical stabilizer as a result of cracks, which, if not detected and corrected, could result in loss of control of the airplane, accomplish the following:

(a) Inspect the vertical stabilizer for cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS: PART I—INSPECTION section of Twin Commander SB No. 218, dated May 19, 1994, including Revision Notices 1 and 2, dated July 11, 1994, and September 23, 1994, respectively.

(b) If damage or cracks are found within the limits of Figures 1 and 2 of the service information referenced above, prior to further flight, modify the vertical stabilizer in accordance with the ACCOMPLISHMENT INSTRUCTIONS: PART II—MODIFICATION section of Twin Commander SB No. 218, dated May 19, 1994, including Revision Notices 1 and 2, dated July 11, 1994, and September 23, 1994, respectively.

(c) If damage or cracks are found outside the limits referenced in Figures 1 and 2 of the service information referenced above or if cracks intersect, prior to further flight, replace the damaged parts with new parts in accordance with the applicable maintenance manual instructions. The requirements of this AD still apply when the damaged parts are replaced, unless the stabilizer is modified as specified in paragraph (b) of this AD.

(d) If no cracks are found, accomplish one of the following:

(1) Reinspect at intervals not to exceed 500 hours TIS, and modify any damaged or cracked vertical stabilizer as specified in paragraphs (b) and (c) of this AD; or

(2) Prior to further flight, modify the vertical stabilizer in accordance with the ACCOMPLISHMENT INSTRUCTIONS: PART II—MODIFICATION section of Twin Commander SB No. 218, dated May 19, 1994, including Revision Notices 1 and 2, dated July 11, 1994, and September 23, 1994, respectively.

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

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Northwest Mountain Region, 1601 Lind Avenue S.W., Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

(g) The inspections and modification required by this AD shall be done in accordance with Twin Commander Service Bulletin 218, dated May 19, 1994, including Revision Notices 1 and 2, dated July 11, 1994, and September 23, 1994, respectively. 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 Twin Commander Aircraft Corporation, 19003 59th Drive, NE., Arlington, Washington 98223. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment (39–9283) becomes effective on July 22, 1995.

Issued in Kansas City, Missouri, on June 13, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–15013 Filed 6–22–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–CE–24–AD; Amendment 39–9284; AD 95–13–03]

Airworthiness Directives; Beech Aircraft Corporation Model F90, and 99, 100, and 200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Beech Aircraft Corporation (Beech) Model F90, and 99, 100, and 200 series airplanes. This action requires installing a circuit breaker that will open before the landing gear power system motor is damaged to the point of restricting operation of the manual landing gear extension system. An incident where excessive current flow caused the electrical landing gear motor and wiring to catch fire on a Beech Model 200 airplane prompted this action. The actions specified by this AD are intended to prevent excessive current flow through the electrical landing gear motor, which could cause an airplane fire.

DATES: Effective July 28, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 28, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Dale A. Vassalli, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946–4132; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Beech Model F90, and 99, 100, and 200 series airplanes was published in the **Federal Register** on December 30, 1994 (59 FR 67656). The action proposed to require installing a circuit breaker that will open before the landing gear power system motor is damaged to the point of restricting operation of the manual landing gear extension system. Accomplishment of the proposed action would be in accordance with Beech Service Bulletin (SB) No. 2035, Issued: February 1985; Revised August 1990; and the instructions to the following Landing Gear Motor Circuit Breaker Installation Kits (as applicable): 101–3069–1 S, 101–3069–3 S, 101–3069–5 S, and 101–3133–1 S.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

Since issuance of the proposal, Beech has revised SB No. 2035 to the Revision III level (Issued: February 1985; Revised: April 1995). This revision adds reference to Kit No. 101–3069–7 S for the Model A200C airplanes, serial numbers BJ–1 through BJ–66, and incorporates minor editorial corrections. The FAA has determined that Beech Kit No. 101–3069–7 S should be added to the final rule AD, as well as reference to Beech SB 2035, Revision III, Issued: February 1985; Revised: April 1995.

After careful review of all available information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the addition of the installation kit described above, reference to the revised service bulletin, and minor editorial corrections. The FAA has determined that the additions and minor editorial corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 2,297 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 6 workhours (varies between 2 to 6 workhours depending on the airplane model) per airplane to accomplish the required action, and that

the average labor rate is approximately $60 an hour. The cost for parts varies by airplane model; however, for the purposes of this AD, $1,000 is utilized. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,123,920. This figure is based on the assumption that no U.S. operator of the affected airplanes has accomplished the proposed installation.

Beech has informed the FAA that approximately 2,100 installation kits have been sold. Assuming that each of these kits is installed on one of the affected airplanes, the cost impact of this action on U.S. operators is reduced by $2,856,000 from $3,123,920 to $267,920.

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 copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

95–13–03 Beech Aircraft Corporation: Amendment 39–9284; Docket No. 94–CE–24–AD.

Applicability: The following airplane models and serial numbers, certificated in any category:

Models	Serial numbers
F90	LA–2 through LA–225 equipped with mechanical landing gear.
99, 99A, A99A, and B99.	U–1 through U–49 equipped with mechanical landing gear and U–51 through U–164 equipped with mechanical landing gear.
100 and A100	B–1 through B–94 and B–100 through B–247.
B100	BE–2 through BE–137.
200 and B200	BB–2, BB–6 through BB–1157, BB–1159 through BB–1166, and BB–1168 through BB–1192.
200C and B200C	BL–1 through BL–72.
200T and B200T	BT–1 through BT–30.
200CT and B200CT.	BN–1 through BN–4.
A100 (U–12F)	B–95 through B–99.
A100–1 (U–21J)	BB–3, BB–4, and BB–5.
A200 (C–12A/C)	BC–1 through BC–75 and BD–1 through BD–30.
A200C (UC–12B)	BJ–1 through BJ–66.
A200CT (C–12D)	BP–1, BP–22, and BP–24 through BP–45.
A200CT (FWC–12D).	BP–7 through BP–11.
A200CT (RC–12D).	GR–1 through GR–13.
A200CT (RC–12G).	FC–1, FC–2, and FC–3.
A200CT (RC–12H).	GR–14 through GR–19.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent excessive current flow through the electrical landing gear motor, which could result in an airplane fire, accomplish the following:

(a) Install a circuit breaker that will open before the landing gear power system motor is damaged to the point of restricting operation of the manual landing gear extension system by accomplishing the following:

(1) Prepare the airplane by completing the ACCOMPLISHMENT INSTRUCTIONS section of Beech Service Bulletin No. 2035, Revision III: Issued: February 1985; Revised: April 1995.

(2) Incorporate one of the following Landing Gear Motor Circuit Breaker Installation Kits, as applicable, in accordance with the instructions provided with the kits:

(i) 101–3069–1 S for Models 200, B200, 200C, B200C, 200T, B200T, 200CT, B200CT, A200 (C–12A/C), and A200C (UC–12B);

(ii) 101–3069–3 S for Models 100, A100, B100, and A100–1 (U–21J);

(iii) 101–3069–5 S for Models F90, 99, 99A, A99A, and B99;

(iv) 101–3069–7 S for Model A200C (UC–12B); and

(v) 101–3133–1 S for Models A200 (C–12A/C), A200CT (C–12D), A200CT (FWC–12D), A200CT (RC–12D), A200CT (RC–12G), and A200CT (RC–12H).

(b) 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.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

(d) The installation required by this AD shall be done in accordance with the instructions to Landing Gear Motor Circuit Breaker Installation Kits 101–3069–1 S, 101–3069–3 S, 101–3069–5 S, 101–3069–7 S, or 101–3133–1 S, as referenced in Beech Service Bulletin No. 2035, Revision III: Issued: February 1985; Revised: April 1995. 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 the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–9284) becomes effective on July 28, 1995. Issued in Kansas City, Missouri, on June 13, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14870 Filed 6–22–95; 8:45 am]

BILLING CODE 4910–13–U

NATIONAL LABOR RELATIONS BOARD

29 CFR Parts 100 and 102

Miscellaneous Amendments

AGENCY: National Labor Relations Board (NLRB).

ACTION: Miscellaneous amendment rule.

SUMMARY: The National Labor Relations Board is issuing a miscellaneous amendments rule to its administrative regulations to update cross-references and to change the NLRB's headquarters address.

EFFECTIVE DATE: The miscellaneous amendments are effective June 23, 1995.

FOR FURTHER INFORMATION CONTACT: Gloria Joseph, Director of Administration, National Labor Relations Board, Room 7108, 1099 14th Street NW, Washington, DC 20570–0001. (202–273–3890).

SUPPLEMENTARY INFORMATION: On July 21, 1994, the National Labor Relations Board amended its administrative regulations (59 FR 37157) governing the standards of conduct and financial disclosure requirements of its employees of the Agency. Most of those regulations had been superseded by the Standards of Ethical Conduct for Employees of the Executive Branch issued by the Office of Government (OGE). The NLRB published the rule to repeal those portions of the provisions that were superseded by the executive branch-wide standards and to update cross-references in the current regulations that continued to be applicable. Again, on May 5, 1995, the NLRB published a rule to correct amendatory instructions 4, and 5, and amendatory instruction 10. (59 FR 37158) of the July 21, 1994 amending rule (60 FR 22269). This miscellaneous amendments rule is being published to update cross-references, and change the NLRB's headquarters address in some sections from its former address of 1717 Pennsylvania Avenue NW to its current address of 1099 14th Street NW.

List of Subjects in 29 CFR Parts 100 and 102

Administrative practice and procedure; Civil rights; Claims; Equal employment opportunity; Individuals with disabilities.

Parts 100 and 102 of Title 29 CFR are amended as follows:

PART 100—ADMINISTRATIVE REGULATIONS

1. The authority citation for part 100 is revised to read as follows:

Authority: Sec. 6, National Labor Relations Act, as amended (29 U.S.C. 141, 146).

Subpart A is also issued under 5 U.S.C. 7301; 5 U.S.C. app. (Ethics in Government Act of 1978); E.O. 12674, 3 CFR 1989 Comp., 215, as modified by E.O. 12731, 3 CFR 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403, 2635.802(a), 2635.803; 18 U.S.C. 201 et seq.; 18 U.S.C. 208; 57 FR 56433 (codified at 5 CFR 735).

Subpart B is also issued under the Inspector General Act of 1978, as amended by the Inspector General Act Amendment of 1988, 5 U.S.C. app. 3; 18 U.S.C. 201 *et seq.*; 5 CFR 735; 42 U.S.C. 2000e–16(a); 29 CFR 1613.2049a) and 29 CFR 1613.216.

Subpart D is also issued under 28 U.S.C. 2672; 28 CFR part 14.

Subpart E is also issued under 29 U.S.C. 794.

§ 100.502 [Amended]

2. In § 100.502, reference ''(§§ 100.601–100.670)'' is revised to read ''(§§ 100.501–100.570)''.

§ 100.503 [Amended]

3. In § 100.503, in the definition of ''qualified individual with handicaps'', in paragraph (4), the reference ''§ 100.640'' is revised to read ''§ 100.540''.

§ 100.549 [Amended]

4. In § 100.549, reference ''§ 100.150'' is revised to read ''§ 100.550''.

§ 100.550 [Amended]

5. In § 100.550(a)(3) and (b)(2), reference ''§ 100.650(a)'' is revised to read ''§ 100.550(a)''.

§ 100.560 [Amended]

6. In § 100.560(d) reference ''§ 100.160'' is revised to read ''§ 100.560''.

PART 102—RULES AND REGULATIONS, SERIES 8

1. The authority citation for Part 102 continues to read as follows:

Authority: Sec. 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117 also issued under sec. 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)), and section 552a(j) and (k) of the Privacy Act (5 U.S.C. 552a(j) and (k)). Sections 102.143 through 102.155 also issued under sec. 504(c)(1) of the Equal Access to Justice Act as amended (5 U.S.C. 504(c)(1)).

§ 102.117 [Amended]

2. In § 102.117(f), (g), and (i) the address ''1717 Pennsylvania Avenue NW., Washington, DC 20570'' is revised to read ''1099 14th Street NW., Washington, DC 20570''.

3. In § 102.117, paragraph (c)(2)(iii)(*a*), (*b*), and (*c*) is renumbered as paragraph (c)(2)(iii)(A), (B), and (C).

By direction of the Board.

National Labor Relations Board,

John J. Toner,

Acting Executive Secretary.

[FR Doc. 95–15352 Filed 6–22–95; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[AD–FRL–5217–2]

RIN 2060–AE04

National Emission Standards for Hazardous Air Pollutants From Secondary Lead Smelting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for new and existing secondary lead smelters pursuant to section 112 of the Clean Air Act (the Act) as amended in 1990. Secondary lead smelters have been identified by the EPA as significant emitters of several chemicals identified in the Act as hazardous air pollutants (HAP's) including but not limited to lead compounds, arsenic compounds, and 1,3-butadiene. Chronic exposure to arsenic and 1,3-butadiene is associated with skin, bladder, liver and lung cancer and other developmental and reproductive effects. Exposure to lead compounds results in adverse effects on the blood, central nervous system and kidneys. Children are particularly sensitive and exposure to lead compounds can also result in reduced cognitive development and reduced growth. This rulemaking will affect secondary lead smelters that use blast, reverberatory, rotary, or electric smelting furnaces to recover lead metal from scrap lead, primarily from used lead-acid automotive-type batteries. The purpose of the final rule is to reduce HAP emissions from secondary lead smelting. This rule is estimated to reduce emissions, including metal HAP's and organic HAP's, by about 1,300 megagrams (1,400 tons) per year.

The NESHAP provides protection to the public by requiring all secondary lead smelters to meet emission standards reflecting the application of the maximum achievable control technology (MACT). The NESHAP regulates emissions of lead compounds and total hydrocarbons (THC's) as surrogates for metal HAP's and organic HAP's, respectively. The EPA is also adding secondary lead smelters that are area sources to the list of source categories that are subject to MACT standards.

EFFECTIVE DATE: June 23, 1995.

ADDRESSES: *Docket.* Docket No. A–92–43, containing information considered by the EPA in development of the promulgated standards, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street, SW, Washington, DC 20460; telephone (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

Background Information Document. A background information document (BID) for the promulgated standards may be obtained from the docket; the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone (919) 541–2777; or from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, telephone (703) 487–4650. Please refer to ''Secondary Lead Smelting—Background Information for Promulgated Standards,'' (EPA–453/R–95–008b).

The BID contains a summary of all the public comments made on the proposed standards and the EPA's response to the comments. It also contains a summary of the changes made to the standards since proposal.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Mulrine, Metals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541–5289.

SUPPLEMENTARY INFORMATION:

Judicial Review. Under section 307(b)(1) of the Act, judicial review of a NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

The information presented in this preamble is organized as follows:

I. Background
II. Summary
A. Summary of Promulgated Standards
B. Summary of Major Changes Since Proposal
C. Summary of Environmental, Energy, Cost, and Economic Impacts
III. Public Participation
IV. Significant Public Comments and Responses
A. Adverse Health Effects Finding for Area Sources
B. Hydrogen Chloride/Chlorine Emission Standards
C. Metal Hazardous Air Pollutant Monitoring Requirements
D. Exemption from Resource Conservation and Recovery Act Boiler and Industrial Furnace Emission Standards
V. Administrative Requirements
A. Docket
B. Executive Order 12866
C. Unfunded Mandates Act
D. Paperwork Reduction Act
E. Regulatory Flexibility Act

I. Background

On July 16, 1992 (57 FR 31576), the EPA published a list of major and area sources for which NESHAP are to be promulgated. On December 3, 1993 (58 FR 63941), the EPA published a schedule for promulgation of those standards. The secondary lead smelting source category is included on the list of major sources and the EPA is required to establish national emission standards by May 31, 1995 according to this schedule. Major sources are those sources emitting 10 or more tons per year of any one HAP or 25 or more tons per year of a combination of HAP's.

This NESHAP was proposed in the **Federal Register** on June 9, 1994 (59 FR 29750). The same notice also announced that the EPA was proposing to add secondary lead smelters that are area sources to the list of source categories that will be subject to national emission standards. Area sources are those smelters emitting less than 10 tons per year of any single HAP and less than 25 tons per year of a combination of HAP's. The EPA received 31 letters commenting on the proposed rule and proposed area source listing. The EPA received no requests for a public hearing. The EPA published a supplemental notice announcing the availability of new data regarding the proposed standards for hydrogen chloride/chlorine (HCl/Cl_2) emissions on April 19, 1995 (60 FR 19556). The EPA received eight comment letters in response to the supplemental notice.

II. Summary

A. Summary of Promulgated Standards

The promulgated rule establishes standards to limit HAP emissions from smelting furnaces, refining kettles, agglomerating furnaces, dryers, and fugitive dust sources at both major source and area source secondary lead smelters. The promulgated rule does not apply to primary lead smelters, lead refiners, or lead remelters.

Emission standards promulgated under section 112 are to be technology-based and are to reflect the maximum degree of reduction of HAP emissions achievable taking into consideration the cost of achieving the emission reduction, any nonair quality health and environmental impacts and energy requirements. These standards are termed MACT standards. Emission reduction may be accomplished through application of a variety of measures, methods, or techniques. Emission standards, however, can be no less stringent than a minimum baseline or ''floor'' for standards set out in the statute.

For new sources, the standards for a source category or subcategory cannot be less stringent than the emission control that is achieved in practice by the best controlled similar source. The standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (excluding certain sources described in section 112(d)(3) of the Act) for categories and subcategories with 30 or more sources, or the best-performing 5 sources for categories and subcategories with fewer than 30 sources. There are fewer than 30 secondary lead smelters, so the standards for existing sources are based on the best-performing 5 sources.

Floor levels of control were determined for each of the affected source types under consideration for regulation. Source types are process sources, process fugitive sources, and fugitive dust sources. For process fugitive sources and fugitive dust sources, which are similar in character and emissions potential across all secondary lead smelters, the entire population of secondary lead smelters are considered in determining MACT floor levels of control. For process sources, specifically smelting furnaces, smelters are differentiated and divided into configurations based on the

smelting furnace types used at individual smelters. In all but one case, floors for existing source MACT and new source MACT are identified. In the one case where existing source MACT is less stringent than new source MACT, the determination was made that the establishment of standards beyond the existing source floor was unreasonable. A complete discussion of the selection of the MACT and basis of standards for each source type is presented in the preamble to the proposed rule (59 FR 29760; June 9, 1994).

1. Process Emission Sources

Owners and operators of all smelting furnace types must limit lead compound emissions, which is a surrogate for all metal HAP's, to no more than 2.0 milligrams per dry standard cubic meter (mg/dscm; 0.00087 grains per dry standard cubic foot (gr/dscf)). Owners and operators must limit THC emissions, which is a surrogate for all organic HAP's, to varying levels depending on the smelting furnace type. No THC limits apply to reverberatory, rotary, and electric furnaces not collocated with blast furnaces.

Owners and operators of collocated reverberatory and blast furnaces must comply with a THC limit of 20 parts per million by volume (ppmv) as propane at 4 percent carbon dioxide (CO_2) when both furnaces are operating. Less stringent limits apply when the reverberatory furnace is not operating. When the reverberatory furnace is not operating, new blast furnaces collocated with reverberatory furnaces must comply with a THC limit of 70 ppmv, and existing blast furnaces must comply with a THC limit of 360 ppmv.

Owners and operators of new blast furnaces located at blast-furnace-only smelters must comply with a THC limit of 70 ppmv. Existing blast furnaces located at blast-furnace-only smelters must comply with a THC limit of 360 ppmv. The THC emissions from each blast furnace charging chute at all smelters with blast furnaces shall not exceed 0.20 kilograms per hour (kg/hr; 0.44 pounds per hour (lb/hr)).

Table 2 in the attached regulatory text summarizes the emission limits for smelting furnace process sources.

2. Process Fugitive Emission Sources

Owners and operators must comply with either of two process fugitive emission control options. Each process fugitive emission source must be controlled either by an enclosure-type hood that is ventilated to a control device or must be fully enclosed within a containment building (within the meaning of 40 CFR part 265, subpart DD) that is ventilated to a control device. Lead compound emissions, as a surrogate for all metal HAP's, from each hood or building control device are limited to 2.0 mg/dscm (0.00087 gr/dscf).

Refining kettle enclosure hoods must have a minimum air velocity into all hood openings (i.e., face velocity) of 75 meters per minute (m/min; 250 feet per minute (fpm)), and the enclosure hoods over drying kiln transition pieces must have a minimum face velocity of 110 m/min (350 fpm). All other process fugitive emission sources (charging points, lead and slag taps, and agglomerating furnaces) with an enclosure hood must have a minimum face velocity of 90 m/min (300 fpm). If a ventilated building is used to control process fugitive sources, then it must have a minimum air velocity into the building through all openings of 75 m/min (250 fpm).

Table 3 in the attached regulatory text summarizes the requirements for process fugitive emission sources.

3. Fugitive Dust Sources

Fugitive dust emissions must be controlled by the measures specified in a standard operating procedures (SOP) manual. The SOP must be developed by the owner or operator of each smelter and submitted to the Administrator for approval. The SOP must describe the measures that will be used to control fugitive dust emissions from plant roadways; the battery breaking area; the furnace, refining, and casting areas; and the materials storage and handling areas. Acceptable control measures include either a total enclosure of the fugitive dust source and ventilation of the enclosure to a control device, or a combination of partial enclosures, wet suppression, and pavement cleaning. Lead compound emissions, as a surrogate for all metal HAP's, from enclosure control devices must be limited to 2.0 mg/dscm (0.00087 gr/dscf).

4. Compliance Dates

Compliance for existing sources must be achieved no later than June 23, 1997, or upon startup for new or reconstructed sources.

5. Compliance Test Methods

Compliance with the emission limits for lead compounds shall be determined according to EPA Reference Method 12 (40 CFR part 60, appendix A). Compliance with the THC emission limits shall be determined according to EPA Reference Method 25A (40 CFR part 60, appendix A). Concentrations of THC shall be reported in ppmv, as propane, corrected to 4 percent CO_2 to correct for dilution. Sampling point locations shall be determined according to EPA Reference Method 1, and stack gas conditions shall be determined, as appropriate, according to EPA Reference Methods 2, 3, 3B, and 4 (40 CFR part 60, appendix A).

6. Monitoring Requirements

The rule requires an initial lead compound emission test to demonstrate compliance with the lead compound emission standards. All owners and operators must also prepare SOP manuals for the systematic inspection and maintenance of all baghouses. Each manual shall also include provisions for the diagnosis of problems and a corrective action plan. In addition, all baghouses are required to have bag leak detection systems with alarms to indicate bag leaks or other causes of increased emissions. Plans for corrective action must prescribe procedures to be followed whenever an alarm is triggered.

Compliance with the THC emission standards (except that for blast furnace charging) will require monitoring either afterburner or incinerator temperature or THC concentration. Only an initial compliance test is required for blast furnace charging.

7. Notification Requirements

The owner or operator will be required to comply with the notification requirements in the General Provisions to part 63 (40 CFR part 60, subpart A). In addition, owners and operators will be required to submit the fugitive dust control SOP and the baghouse SOP to the Administrator for review and approval.

8. Recordkeeping and Reporting Requirements

Owners and operators will be required to comply with the recordkeeping and reporting requirements in the General Provisions to part 63 (40 CFR part 63, subpart A). In addition, the owners and operators will be required to maintain records demonstrating that they have implemented the requirements of the fugitive dust control SOP and the baghouse SOP, including records of all bag leak detection system alarms and corrective actions.

B. Summary of Major Changes Made Since Proposal

Based on public comments received in response to both the initial notice of proposal and the supplemental notice, and other data received since proposal, the EPA has made several changes to the

proposed rule. The BID referred to in the **ADDRESSES** section of this preamble contains a complete explanation of the EPA's reasons for making each of these changes. A summary of the major changes is presented below.

1. Applicability

The applicability of the rule was clarified by adding a statement that the rule does not apply to primary lead smelters, lead refiners, and lead remelters.

2. Standards for Process Sources

The THC emission limits for blast furnaces collocated with reverberatory furnaces were revised to account for periods when the reverberatory furnace is not operating.

When the reverberatory furnace is not operating, these blast furnaces will be allowed to meet the same THC limits as new and existing blast furnaces located at blast-furnace-only smelters (70 ppmv and 360 ppmv, respectively). The proposed standards required that reverberatory/blast furnace facilities meet a THC emission limit of 20 ppmv at all times. The proposed HCl/Cl_2 emission standards (and associated testing and monitoring requirements) are not being promulgated.

3. Standards for Process Fugitive Sources

The ventilation requirements for hoods have been modified; the volumetric flow rate requirement for refining kettle hoods has been withdrawn and the face velocity requirements for furnace charging and tapping have been lowered from 110 m/min (350 fpm) to 90 m/min (300 fpm). A provision has been added that will allow owners and operators to control process fugitive emission sources by enclosing them in a building that is ventilated to a control device, rather than having to comply with the enclosure hood and face velocity requirements at each emission source.

4. Test Methods and Schedule

The annual lead test has been withdrawn for all sources; only an initial lead test is now required. Velometers (anemometers) have been added as an alternate method for determining face velocities for process fugitive hoods and building doorways.

5. Monitoring Requirements

The proposed rule would have required a continuous opacity monitor (COM) and a site-specific opacity limit for monitoring lead compound emissions from process sources. These requirements have been withdrawn. Rather than install and operate a COM, each owner or operator must now prepare a baghouse SOP manual that includes an inspection and maintenance procedure and a corrective action plan for all process, process fugitive, and fugitive dust baghouses. Each baghouse must also be fitted with a bag leak detection system with an alarm to monitor baghouse performance. An alarm signal by itself is not considered to be a violation of the lead compound emission limit. To maintain compliance, the owner or operator must follow the inspection and maintenance procedure and comply with the requirements of the corrective action plan whenever an alarm is activated.

There has been no change to the organic HAP monitoring requirements. The proposed HCl/Cl_2 monitoring requirements have been withdrawn.

6. Recordkeeping and Reporting Requirements

The recordkeeping and reporting requirements have been revised so they are consistent with the baghouse SOP manual in the revised monitoring requirements. Owners and operators also will be required to record the date and time of all bag leak detection system alarm signals, their cause, the corrective action taken, and the timing for such action.

The requirements for THC recordkeeping and reporting have been clarified so that only the 3-hour averages that are not in compliance with the allowable afterburner or incinerator temperature, or THC concentration must be reported, rather than all 3-hour averages for the entire reporting period. The recordkeeping and reporting requirements associated with the HCl/Cl_2 emission standards have been withdrawn. Finally, the reporting frequency has been changed to be consistent with the requirements under § 63.10 of the General Provisions.

C. Summary of Environmental, Health, Cost, and Economic Impacts

The final standards will reduce total nationwide emissions of both metal HAP's and organic HAP's from secondary lead smelters by 1,283 megagrams per year (Mg/yr) (1,411 tons/yr). These reductions include 53 Mg/yr (58 tons/yr) of metal HAP's and 1,230 Mg/yr (1,353 tons/yr) of organic HAP's. No reductions in HCl/Cl_2 emissions are expected as a direct consequence of the final rule because of the deletion of HCl/Cl_2 emission standards since proposal. However, emissions of HCl/Cl_2 are expected to be essentially eliminated in any case because of the elimination of polyvinyl chloride (PVC) plastic as a separator material in batteries. The rationale for not promulgating HCl/Cl_2 emission standards is explained in section IV(B) of this preamble.

These emission reductions will have a positive effect on public health. Metal HAP emissions from secondary lead smelting include lead compounds and arsenic compounds, among others. Populations around secondary lead smelters can be exposed to metal HAP's through inhalation or through ingestion of metal HAP's that have settled on the soil in the vicinity of the smelter. Exposure to lead compounds occurs through inhalation or ingestion, but the effects are the same regardless of the route of exposure. Chronic exposure to lead compounds results in adverse effects on the blood, central nervous system, blood pressure, kidneys, and vitamin D metabolism. Children are particularly sensitive and exposure can also result in reduced cognitive development and reduced growth. Adverse effects on human reproduction have also been reported. Lead compounds can be persistent in the environment and have the potential to accumulate in food chains.

Chronic inhalation exposure to arsenic compounds is strongly associated with lung cancer and is associated with irritation of the skin and mucous membranes (dermatitis, conjunctivitis, pharyngitis, and rhinitis). Chronic oral exposure has resulted in gastrointestinal effects, anemia, peripheral nerve damage, skin lesions, and liver or kidney damage and is linked to skin, bladder, liver, and lung cancer.

Organic HAP emissions from secondary lead smelting include 1,3-butadiene, among other organic compounds. The effects of chronic exposure to 1,3-butadiene include increased cardiovascular disease. Animal studies of chronic exposure to 1,3-butadiene indicate effects on respiratory and cardiovascular systems and the liver, as well as developmental and reproductive effects. Animal studies have also reported tumors from inhalation exposure to 1,3-butadiene and the EPA has classified 1,3-butadiene as a probable human carcinogen.

In addition to the reductions in HAP air emissions achieved, the final standards will also achieve reductions in nationwide emissions of two criteria pollutants, carbon monoxide and particulate matter. Compliance with the final standards will reduce emissions of particulate matter by 135 Mg/yr (149 tons/yr) and those of carbon monoxide by 80,000 Mg/yr (88,000 tons/yr).

No significant adverse secondary air, water, or solid waste impacts are anticipated from these standards. The national annual energy usage due to the installation of the required control devices is expected to be 5.0 million cubic meters per year (180 million cubic feet per year) of natural gas to operate afterburners on blast furnaces and reverberatory/blast furnace smelters. The natural gas consumption estimated at proposal was 3.7 million cubic meters (130 million cubic feet per year). The increase since proposal is due to a revised analysis of the control equipment and amount of natural gas needed to perform gas stream blending to control organic HAP emissions from reverberatory/blast furnace smelters. No other notable energy impacts are expected.

The implementation of this regulation is expected to result in a national annual cost of $2.8 million. This includes an annualized cost from installation of control devices of $1.86 million and total monitoring, reporting, and recordkeeping costs of $0.93 million. At proposal, the estimated national costs were $2.6 million per year. The annualized control costs were estimated to be $890,000 and the annual costs for monitoring, recordkeeping, and reporting were $1.7 million. The annualized control costs have increased since proposal because the cost estimate to control organic HAP emissions from reverberatory/blast furnace smelters was revised in response to public comments. The annual monitoring, recordkeeping, and reporting costs have decreased since proposal because the HCl/Cl_2 monitoring requirements have been withdrawn and the final metal HAP monitoring requirements involve fewer emission tests and less expensive monitoring devices than at proposal.

The economic impact analysis done at proposal showed that the economic impacts from the proposed standard would be insignificant. The economic impact analysis was not revised for promulgation because the relatively small increase in costs is not expected to have any effect on the conclusions of the economic impact analysis.

III. Public Participation

On November 17, 1992, the EPA presented the National Air Pollution Control Techniques Advisory Committee with an overview of the EPA's decision to regulate surrogates in place of regulating individual metal HAP's and organic HAP's.

Prior to proposal of the standards, owners and operators of secondary lead smelters were invited by the EPA to participate in a meeting to discuss the results of the EPA's secondary lead smelter testing program as well as the standards being evaluated for proposal. This meeting was held on October 5, 1993. The comments submitted following this meeting were incorporated into the proposed rule.

The standards were proposed and published in the **Federal Register** on June 9, 1994 (59 FR 29750). The preamble to the proposed standards discussed the availability of the BID, which described the technical basis and the impacts of the proposed standards. Public comments were solicited at the time of proposal.

To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, the opportunity for a public hearing was offered at proposal; however, no requests for a hearing were received. The public comment period was from June 9, 1994 to August 8, 1994. Thirty-one comment letters were received. A supplemental notice was published on April 19, 1995 (60 FR 19556) and eight comment letters were received. The comments were carefully considered by the Administrator in formulating the final rule.

IV. Significant Comments and Responses

The EPA received comment letters on the proposed standards from owners and operators of secondary lead smelters and industry trade associations, States, equipment vendors, and environmental groups. A detailed discussion of all the comments and the EPA's responses can be found in the promulgation BID, which is referenced in the **ADDRESSES** section of this preamble. The summary of comments and responses in the BID serves as the basis for the revisions that have been made to the standards between proposal and promulgation. Most of the comment letters contained multiple comments.

Significant comments and new information were received on four topics since proposal: the area source finding, the standards for process sources (especially those proposed for HCl/Cl_2 emissions), the monitoring requirements for metal HAP's, and the exemption from the Resource Conservation and Recovery Act (RCRA) boiler and industrial furnace (BIF) emission standards. These comments and the EPA's responses are summarized in this preamble.

A. Adverse Health Effects Finding for Area Sources

Six commenters agreed with the EPA's finding that smelters that are area sources (i.e., those with emissions of less than 10 tons per year of any one HAP or 25 tons per year of a combination of HAP's) should be listed as sources subject to section 112 standards and should be subject to the same regulations as smelters that are major sources. Seven commenters disagreed with the EPA's decision to regulate area sources; three of the seven argued that the risks are insufficient to warrant regulation under MACT standards. After considering all comments on the subject, the EPA continues to believe that area sources should be regulated under MACT standards and is, therefore, maintaining its decision to regulate secondary lead smelters that are area sources under this final action.

The decision to list area source smelters to regulate them under the same standards as major source smelters is based on the cancer risks from secondary lead smelter emissions and noncancer health risks posed by lead compound emissions. The estimated annual cancer incidence is 0.1 cases for all seven smelters predicted to be area sources. This cancer incidence is due primarily to exposure to 1,3-butadiene and arsenic. The maximum exposed individual has a cancer risk of 1 in 1,000 and 560,000 individuals are estimated to be exposed to a risk greater than 1 in 1 million.

Section 112(c)(3) of the Act does not offer a ''bright line'' test for the EPA to use in making an area source finding. Instead, the EPA believes that it has discretion to consider a range of health effects endpoints and exposure criteria in making the requisite finding of a threat of adverse effects to health or the environment. In making area source listing determinations, the EPA strives to provide maximum feasible protection against risks to health from HAP's by: (1) Protecting the greatest number of persons possible to an individual lifetime cancer risk level of no higher than approximately 1 in 1 million and (2) limiting to no more than 1 in 10,000 the estimated cancer risk to the hypothetical maximum exposed individual. The estimated cancer risks presented by area source smelters are consistent with those supporting similar EPA decisions to regulate other categories of area sources and with the EPA's strategy to implement section 112 (57 FR 31576, July 16, 1992).

Exposure to lead compounds is also a concern. It is estimated that 250 individuals in the vicinity of area source smelters are exposed to ambient lead levels above the national ambient air quality standard (NAAQS) for lead of 1.5 micrograms per cubic meter ($\mu g/m^3$).

Emissions that result in ambient lead concentrations below the NAAQS are also troubling. Ambient lead levels, particularly in urban areas, may already represent a substantial portion of the lead NAAQS (56 FR 7167, February 21, 1991; 52 FR 16994, May 6, 1987) (existing substantial ambient concentrations of lead justify lowering permissible air emissions for lead from boilers and industrial furnaces burning hazardous waste). Estimates indicate that 300 individuals may be exposed to ambient lead levels above 1.0 $\mu g/m^3$ (two-thirds the current NAAQS) and 1500 individuals may be exposed to levels above 0.5 $\mu g/m^3$ (one-third the current NAAQS) due to the area source smelters. Finally, recent scientific information suggests that lead blood levels in children lower than previously thought may cause adverse health effects (56 FR 7167, February 21, 1991; 56 FR 26469, June 7, 1991) (establishing standards for lead in drinking water).

Lead is also persistent in the environment and individuals, particularly children, can be exposed through pathways other than inhalation. The sites of two former smelters have required Federal cleanup action under the Comprehensive Environmental Response, Compensation, and Liability Act, also known as ''Superfund.'' Both sites were contaminated by lead deposition onto surrounding soil. Deposition at these sites was caused by the same types of air emission sources that will be regulated by this rule.

In short, the EPA finds that secondary lead smelter area sources pose potential adverse human health and environmental threats that justify listing under section 112(c)(3). The Agency further finds that MACT standards are the most appropriate for these sources.

The EPA considers the cost impacts of the final rule, including the regulation of area source smelters by MACT standards, to be reasonable. The pollutants being regulated are especially toxic, warranting heightened control. (cf. S. Rept. 228, 101st Cong., 1st sess., 173.) The overall cost-effectiveness of the rule will be about $1,400 per Mg ($1,300 per ton) of HAP reduced. The EPA's decision to regulate both major and area sources by the same standards also eliminates the potential for adverse effects on competition within the industry.

Finally, the EPA believes that regulating all smelters under the same regulations is consistent with the Agency's responsibilities for achieving environmental justice under Executive Order (E.O.) No. 12898. Historically, some secondary lead smelters have had adverse impacts on communities that are disproportionately represented by minority and lower income populations. Some area source smelters are currently located in communities that are disproportionately represented by minority and lower income populations. Therefore, the EPA believes that regulating all smelters under MACT standards addresses the objectives of E.O. 12898.

B. Hydrogen Chloride/Chlorine Emission Standards

The proposed rule contained emission standards and monitoring requirements to control HCl and Cl_2 emissions from all furnace types. Hydrogen chloride and Cl_2 are formed from the combustion of PVC plastic separators that are found in some used lead-acid batteries. The only significant source of HCl/Cl_2 emissions is from feedstock materials containing PVC. At proposal, the EPA believed that many used lead-acid batteries contained PVC separators. Based on the results of tests at several smelters, the EPA predicted at proposal that the addition of soda ash or limestone fluxing agents to the feed material could achieve the same level of HCl/Cl_2 control as an acid gas scrubber, but at a much lower cost. The proposed emission standards and monitoring requirements and the estimated cost impacts were based on the use of fluxing agents.

Several comments were received stating that the feasibility of fluxing as a control may be overstated and scrubbers may be necessary in many cases. Several commenters also asserted that the proposed HCl/Cl_2 emission standards are not needed because PVC is no longer used as a separator material. Information obtained by the EPA since proposal confirms that PVC is no longer used as a separator material and the proportion of spent batteries with PVC is expected to decline as these batteries are removed from service and recycled (Docket Item IV-D–34). In 1990, about 1 percent of scrap batteries processed at lead smelters contained PVC separators. In 1994, less than 0.1 percent of scrap batteries contain PVC. The EPA predicts that by the time existing smelters must demonstrate compliance with these standards in 1997, batteries containing PVC will only be present in the scrap battery inventory in trace amounts, resulting, at most, in only trivial amounts of HCl or Cl_2 air emissions.

Data provided to the EPA since proposal also indicates that the EPA may have overstated the feasibility of fluxing as a control option. At the blast furnace tested by the EPA, powdered fluxing agents were mixed with flue dust in a briquetting machine and the briquettes were then charged to the furnace. This smelter is the only facility handling flux and flue dust in this manner. After proposal, the operators of a blast-furnace-only smelter that recycled agglomerated flue dust sponsored an HCl testing program in which additional flux was added to the furnace separately in the form of crushed limestone. The test results obtained show that additional fluxing in this manner achieved no incremental reduction in HCl emissions. A reevaluation of the fluxing issue suggests that flux material must be mixed with the flue dust, for example through briquetting, to achieve effective HCl/Cl_2 control. Mixing powdered flux and the flue dust is necessary to achieve a close physical association to promote the chemical reactions that prevent HCl and Cl_2 emissions.

If HCl/Cl_2 control were still required by the rule, those smelters that do not currently operate a scrubber or combine flue dust with flux before charging them to the furnace would need to install and operate a scrubber or reconfigure the flue dust handling and flux delivery system. The cost impacts of the proposed HCl/Cl_2 emission standards, therefore, would be substantially greater than those estimated at proposal. However, as noted above, the EPA predicts that secondary lead smelters will no longer be sources of HCl or Cl_2 emissions when the rule takes effect. For that reason, the EPA is withdrawing the proposed HCl/Cl_2 emission standards and associated monitoring requirements.

Six commenters agreed with the EPA's decision to withdraw the HCl/Cl_2 emission standards and associated monitoring requirements for this rule. Two commenters disagreed with EPA's decision to withdraw the HCl/Cl_2 emission standards. One argued that lead-contaminated personal protective equipment (PPE) that is disposed of in the smelting furnaces could be a source of PVC in addition to battery separators. The other commenter argued for temporary HCl/Cl_2 emission standards for a minimum of 3 to 5 years to confirm that HCl/Cl_2 emissions have been reduced.

Data provided by a smelter operator indicate that less than one ton per year of lead-contaminated PPE is disposed of in the smelting furnace of a large smelter. Only a fraction of PPE is PVC and only a fraction of PVC is chlorine (Docket Item IV–D–47). Therefore, the potential HCl/Cl_2 emissions attributed to PPE disposal is minimal. A worse case estimate of HCl/Cl_2 emissions due to PPE disposal indicates maximum

emissions on the order of a few hundred pounds per year.

In regard to the issuance of temporary standards, pending confirmation that HCl/Cl_2 emissions have been reduced, the EPA acknowledges that such an action would be prudent if the predicted decline in PVC was uncertain. However, the EPA is reasonably confident that the predicted decline in PVC separators in secondary lead smelter feedstock will continue and PVC will be present in only trace quantities by the 1997 effective date of this rule. Therefore, it is EPA's judgement that a temporary HCl/Cl_2 emission standard is unnecessary.

After considering all comments, the EPA believes the HCl/Cl_2 emission standards and associated monitoring requirements should be deleted from the rule.

C. Metal Hazardous Air Pollutant Monitoring Requirements

The proposed rule would have required each smelter to install and operate a COM and establish a site-specific opacity limit during the initial lead compound compliance test for process sources. Exceeding this opacity limit would have constituted a violation of the lead compound emission standard. For process fugitive and fugitive dust sources, the proposed rule required an annual lead test and a baghouse inspection and maintenance plan.

The EPA received many comments that presented technical arguments against the proposed metal HAP monitoring requirements. Several commenters argued that there is a poor correlation among lead, particulate matter, and opacity at low grain loadings. Therefore, the argument goes, opacity cannot be used as a reliable surrogate to indicate compliance with a numerical lead emission limit. Other commenters recommended that other technologies are more reliable, accurate, and cost effective than COM's for detecting broken bags in baghouses, particularly bag leak detection systems using triboelectric or light scattering effects.

Based on these comments and additional information collected from monitoring equipment vendors since proposal, the EPA has revised the metal HAP monitoring requirements. The final monitoring provisions require an SOP for baghouse inspection and maintenance that includes a bag leak detection system with an alarm and a corrective action plan for responding to alarms. The same monitoring requirements will apply to all metal HAP emission sources that are controlled by baghouses (i.e., process, process fugitive, and fugitive dust sources).

The bag leak detection system must be fully operational prior to the initial lead compliance test. However, the detection system will not be used to monitor compliance with the numerical lead emission limit; it will be used to monitor baghouse performance and operating conditions to indicate baghouse failures.

The EPA agrees that COM's cannot be used to monitor compliance with a numerical lead compound emission limit applicable to secondary lead smelting. Instead, the EPA has determined that compliance can be demonstrated and ensured through well-specified operation and maintenance procedures as delineated in this final rule.

D. Exemption From Resource Conservation and Recovery Act Boiler and Industrial Furnace Emission Standards

The EPA proposed to continue the exemption (40 CFR 266.100(c)) for RCRA regulation of air emissions from secondary lead smelters burning hazardous wastes solely for metal recovery. All commenters agreed that this is an appropriate approach. As the EPA stated at proposal, this exemption is temporary and permanent resolution can be made at the time of the section 112(f) residual risk determination.

V. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docket system is intended to allow members of the public and affected industries to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the BID's and preambles to the proposed and promulgated standards, the contents of the docket will serve as the official record in case of judicial review (section 307(d)(7)(A) of the Act).

B. Executive Order 12866

The Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the E.O. 12866, (58 FR 51735, October 4, 1993). The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations have been documented in Docket A–92–43 (see the **ADDRESSES** section of this preamble).

C. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of significantly less than $100 million in any 1 year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not

required to develop a plan with regard to small governments.

D. Paperwork Reduction Act

Information collection requirements associated with this regulation (those included in 40 CFR part 63, subpart A and subpart X) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and have been assigned OMB control number 2060–0296. An Information Collection Request (ICR) document has been prepared by the EPA (ICR No. 1686.02) to reflect the revised information requirements of the final rule and has been submitted to OMB for review. A copy may be obtained from Sandy Farmer, Information Policy Branch, 401 M Street, SW. (2136), Washington, DC 20460, or by calling (202) 260–2740.

The annual industry recordkeeping and reporting burden and costs averaged over the first 3 years for secondary lead smelters are 11,300 hours and $452,000 per year. This collection of information is estimated to have an annual government recordkeeping and reporting burden averaging 1,600 hours over the first 3 years. These burden estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (EPA 2136); U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for the EPA.''

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (or RFA, Public Law 96–354, September 19, 1980) requires Federal agencies to give special consideration to the impact of regulation on small businesses. The RFA specifies that a regulatory flexibility analysis must be prepared if a screening analysis indicates a regulation will have a significant economic impact on a substantial number of small entities. For this industry, a small entity is defined as one with 500 or fewer employees. A ''substantial number'' of small entities is generally considered to be more than 20 percent of the small entities in the affected industry.

Regulatory impacts are considered significant if:

(1) Annual compliance costs increase total costs of production by more than 5 percent;

(2) Annual compliance costs as a percent of sales are at least 20 percent higher for small entities;

(3) Capital cost of compliance represents a significant portion of capital available to small entities; or

(4) The requirements of the regulation are likely to result in closures of small entities.

The results of the economic assessment performed at proposal served as the regulatory flexibility analysis and indicated that the rule will have an economic impact on small business entities. The assessment has not been updated because the impacts on the small entities have not increased since proposal. However, adverse economic impacts have been minimized to the greatest extent possible in this rulemaking, and those that remain are unavoidable. All of the small entities that are currently operating and that are impacted are major sources of HAP's for which the EPA is required to adopt MACT standards. Consequently, the economic impacts cannot be minimized by promulgating less stringent standards based on generally achievable control technology (GACT). The final standards are based on MACT floor controls, and in no instance did the EPA establish standards based on controls more stringent than the floor. The EPA was also able to identify alternatives to add-on controls (e.g., work practice controls) in the MACT floors that offered equivalent levels of control. The EPA has minimized the impacts associated with monitoring by adopting a surrogate pollutant approach and by allowing for alternative monitoring strategies when available. The impacts on all entities have been reduced since proposal by withdrawing the HCl/Cl_2 emission standards and by revising the metal HAP monitoring requirements. Finally, the EPA has minimized the impacts associated with recordkeeping and reporting by promulgating only the minimum requirements needed to document continuous compliance with the emission limits.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 63

Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements, Secondary lead smelters.

Dated: May 31, 1995.

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 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new entry to the table under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
National Emission Standards for Hazardous Air Pollutants for Source Categories [3]	
* * * * *	
63.548–63.550	2060–0296
* * * * *	

[3] The ICRs referenced in this section of the Table encompass the applicable general provisions contained in 40 CFR part 63, subpart A, which are not independent information collection requirements.

PART 63—[AMENDED]

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

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

2. Part 63 is amended by adding subpart X to read as follows:

Subpart X—National Emission Standards for Hazardous Air Pollutants From Secondary Lead Smelting

Sec.

63.541 Applicability.
63.542 Definitions.
63.543 Standards for process sources.
63.544 Standards for process fugitive sources.
63.545 Standards for fugitive dust sources.
63.546 Compliance dates.
63.547 Test methods.
63.548 Monitoring requirements.
63.549 Notification requirements.
63.550 Recordkeeping and reporting requirements.

SUBPART X—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FROM SECONDARY LEAD SMELTING

§ 63.541 Applicability.

(a) The provisions of this subpart apply to the following affected sources at all secondary lead smelters: blast, reverberatory, rotary, and electric smelting furnaces; refining kettles; agglomerating furnaces; dryers; process fugitive sources; and fugitive dust sources. The provisions of this subpart do not apply to primary lead smelters, lead refiners, or lead remelters.

(b) Table 1 of this subpart specifies the provisions of subpart A that apply and those that do not apply to owners and operators of secondary lead smelters subject to this subpart.

TABLE 1.—GENERAL PROVISIONS APPLICABILITY TO SUBPART X

Reference	Applies to subpart X	Comment
63.1	Yes.	
63.2	Yes.	
63.3	Yes.	
63.4	Yes.	
63.5	Yes.	
63.6 (a), (b), (c), (e), (f), (g), (i) and (j).	Yes.	
63.6 (d) and (h)	No.	No opacity limits in rule.
63.7	Yes.	
63.8	Yes.	
63.9 (a), (b), (c), (d), (e), (g), (h)(1–3), (h)(5–6), and (j).	Yes.	
63.9 (f) and (h)(4).	No.	No opacity or visible emission limits in subpart X.
63.10	Yes.	
63.11	No.	Flares will not be used to comply with the emission limits.
63.12 to 63.15	Yes.	

§ 63.542 Definitions.

Terms used in this subpart are defined in the Act, in subpart A of this part, or in this section as follows:

Agglomerating furnace means a furnace used to melt into a solid mass flue dust that is collected from a baghouse.

Bag leak detection system means systems that include, but are not limited to, devices using triboelectric, light scattering, and other effects to monitor relative or absolute particulate matter emissions.

Battery breaking area means the plant location at which lead-acid batteries are broken, crushed, or disassembled and separated into components.

Blast furnace means a smelting furnace consisting of a vertical cylinder atop a crucible, into which lead-bearing charge materials are introduced at the top of the furnace and combustion air is introduced through tuyeres at the bottom of the cylinder, and that uses coke as a fuel source and that is operated at such a temperature in the combustion zone (greater than 980 °C) that lead compounds are chemically reduced to elemental lead metal.

Blast furnace charging location means the physical opening through which raw materials are introduced into a blast furnace.

Dryer means a chamber that is heated and that is used to remove moisture from lead-bearing materials before they are charged to a smelting furnace.

Dryer transition piece means the junction between a dryer and the charge hopper or conveyor, or the junction between the dryer and the smelting furnace feed chute or hopper located at the ends of the dryer.

Electric furnace means a smelting furnace consisting of a vessel into which reverberatory furnace slag is introduced and that uses electrical energy to heat the reverberatory furnace slag to such a temperature (greater than 980 °C) that lead compounds are reduced to elemental lead metal.

Enclosure hood means a hood that covers a process fugitive emission source on the top and on all sides, with openings only for access to introduce or remove materials to or from the source and through which an induced flow of air is ventilated.

Fugitive dust source means a stationary source of hazardous air pollutant emissions at a secondary lead smelter that is not associated with a specific process or process fugitive vent or stack. Fugitive dust sources include, but are not limited to, roadways, storage piles, materials handling transfer points, materials transport areas, storage areas, process areas, and buildings.

Furnace and refining/casting area means any area of a secondary lead smelter in which:

(1) Smelting furnaces are located; or

(2) Refining operations occur; or

(3) Casting operations occur.

Materials storage and handling area means any area of a secondary lead smelter in which lead-bearing materials (including, but not limited to, broken battery components, slag, flue dust, and dross) are stored or handled between process steps including, but not limited to, areas in which materials are stored in piles, bins, or tubs, and areas in which material is prepared for charging to a smelting furnace.

Partial enclosure means a structure that incorporates walls or partitions on at least three sides or three-quarters of the circumference of an area to screen the material or process equipment located therein to prevent the entrainment of particulate matter into the air.

Pavement cleaning means the use of vacuum equipment, water sprays, or a combination thereof to remove dust or other accumulated material from the paved areas of a secondary lead smelter.

Plant roadway means any area of a secondary lead smelter that is subject to vehicle traffic, including traffic by fork lifts, front-end loaders, or vehicles carrying whole batteries or cast lead ingots. Excluded from this definition are employee and visitor parking areas, provided they are not subject to traffic by vehicles carrying lead-bearing materials.

Process fugitive emission source means a source of hazardous air pollutant emissions at a secondary lead smelter that is associated with lead smelting or refining but is not the primary exhaust stream from a smelting furnace and is not a fugitive dust source. Process fugitive sources include, but are not limited to, smelting furnace charging points, smelting furnace lead and slag taps, refining kettles, agglomerating furnaces, and drying kiln transition pieces.

Refining kettle means an open-top vessel that is constructed of cast iron or steel and is indirectly heated from below and contains molten lead for the purpose of refining and alloying the lead. Included are pot furnaces, receiving kettles, and holding kettles.

Reverberatory furnace means a refractory-lined furnace that uses one or more flames to heat the walls and roof of the furnace and lead-bearing scrap to such a temperature (greater than 980 oC) that lead compounds are chemically reduced to elemental lead metal.

Rotary furnace (also known as a rotary reverberatory furnace) means a furnace consisting of a refractory-lined chamber that rotates about a horizontal axis and that uses one or more flames to heat the walls of the furnace and lead-bearing scrap to such a temperature (greater than 980 oC) that lead compounds are chemically reduced to elemental lead metal.

Secondary lead smelter means any facility at which lead-bearing scrap material, primarily but not limited to lead-acid batteries, is recycled into elemental lead by smelting.

Smelting means the chemical reduction of lead compounds to lead metal in high-temperature furnaces including, but not limited to, blast furnaces, reverberatory furnaces, rotary furnaces, and electric furnaces.

Total enclosure means a building with a roof and walls or partitions on all sides or the entire circumference to shelter the materials and/or process equipment located therein to prevent the entrainment of particulate matter into the air and with openings only to allow access and egress for people and vehicles.

Vehicle wash means a device for removing dust and other accumulated material from the wheels, body, and underside of a vehicle to prevent the inadvertent transfer of lead-contaminated material to another area of a secondary lead smelter or to public roadways.

Wet suppression means the use of water, water combined with a chemical surfactant, or a chemical binding agent to prevent the entrainment of dust into the air from fugitive dust sources.

§ 63.543 Standards for process sources.

(a) No owner or operator of a secondary lead smelter shall discharge or cause to be discharged into the atmosphere from any existing, new, or reconstructed blast, reverberatory, rotary, or electric smelting furnace any gases that contain lead compounds in excess of 2.0 milligrams of lead per dry standard cubic meter (0.00087 grains of lead per dry standard cubic foot).

(b) [Reserved]

(c) No owner or operator of a secondary lead smelter with a collocated blast furnace and reverberatory furnace shall discharge or cause to be discharged into the atmosphere from any existing, new, or reconstructed blast furnace or reverberatory furnace any gases that contain total hydrocarbons in excess of 20 parts per million by volume, expressed as propane corrected to 4 percent carbon dioxide, except as allowed under paragraphs (c)(1) and (c)(2) of this section.

(1) No owner or operator of a secondary lead smelter with a collocated blast furnace and reverberatory furnace shall discharge or cause to be discharged into the atmosphere from any existing blast furnace any gases that contain total hydrocarbons in excess of 360 parts per million by volume, expressed as propane corrected to 4 percent carbon dioxide, during periods when the reverberatory furnace is not operating.

(2) No owner or operator of a secondary lead smelter with a collocated blast furnace and reverberatory furnace shall discharge or cause to be discharged into the atmosphere from any blast furnace that commences construction or reconstruction after June 9, 1994, any gases that contain total hydrocarbons in excess of 70 parts per million by volume, expressed as propane corrected to 4 percent carbon dioxide, during periods when the reverberatory furnace is not operating.

(d) No owner or operator of a secondary lead smelter with only blast furnaces shall discharge or cause to be discharged into the atmosphere from any existing blast furnace any gases that contain total hydrocarbons in excess of 360 parts per million by volume, expressed as propane corrected to 4 percent carbon dioxide.

(e) No owner or operator of a secondary lead smelter with only blast furnaces shall discharge or cause to be discharged into the atmosphere from any blast furnace that commences construction or reconstruction after June 9, 1994, any gases that contain total hydrocarbons in excess of 70 parts per million by volume, expressed as propane corrected to 4 percent carbon dioxide.

(f) If the owner or operator of a blast furnace or collocated blast and reverberatory furnace combines the blast furnace charging process fugitive emissions with the blast furnace process emissions and discharges them to the atmosphere through a common emission point, then compliance with the applicable total hydrocarbon concentration limit under paragraph (c) of this section shall be determined downstream from the point at which the two emission streams are combined.

(g) If the owner or operator of a blast furnace or a collocated blast and reverberatory furnace does not combine the blast furnace charging process fugitive emissions with the blast furnace process emissions and discharges such emissions to the atmosphere through separate emission points, then the total hydrocarbon emission rate for the blast furnace process fugitive emissions shall not be greater than 0.20 kilograms per hour (0.44 pounds per hour).

(h) The standards for process sources are summarized in table 2.

TABLE 2.—SUMMARY OF STANDARDS FOR PROCESS SOURCES

Furnace configuration	Lead compounds (milligrams per dry standard cubic meter)	Total hydrocarbons	Citation
Collocated reverberatory/blast (when both furnaces operating).	2.0	20 parts per million by volume [1]	§ 63.543 (a), (c).
(when reverberatory furnace not operating)	2.0	360 parts per million by volume [1] (existing)	§ 63.543 (a), (c)(1).
		70 parts per million by volume [1] (new) [2]	§ 63.543 (a), (c)(2).
Blast	2.0	360 parts per million by volume [1] (existing)	§ 63.543 (a), (d).
		70 parts per million by volume [1] (new) [2]	§ 63.543(e).
		0.20 kilograms per hour [3]	§ 63.543(g).
Reverberatory, rotary, and electric	2.0	None	§ 63.543(a).

[1] Total hydrocarbons emission limits are as propane at 4 percent carbon dioxide to correct for dilution, based on a 3-hour average.
[2] New sources include those furnaces that commence construction or reconstruction after June 9, 1994.
[3] Applicable to blast furnace charging process fugitive emissions that are not combined with the blast furnace process emissions prior to the point at which compliance with the total hydrocarbons concentration standard is determined.

§ 63.544 Standards for process fugitive sources.

(a) Each owner or operator of a secondary lead smelter shall control the process fugitive emission sources listed in paragraphs (a)(1) through (a)(6) of this section by complying with either paragraph (b) or (c) of this section.

(1) Smelting furnace and dryer charging hoppers, chutes, and skip hoists;

(2) Smelting furnace lead taps and molds;

(3) Smelting furnace slag taps and molds;

(4) Refining kettles;

(5) Dryer transition pieces; and

(6) Agglomerating furnace product taps.

(b) All process fugitive emission sources listed in paragraphs (a)(1) through (a)(6) of this section shall be controlled by an enclosure hood meeting the requirements of paragraphs (b)(1), (b)(2), or (b)(3) of this section except those meeting the requirements of paragraph (c) of this section. All enclosure hoods shall be ventilated to a control device that shall not discharge to the atmosphere any gases that contain lead compounds in excess of 2.0 milligrams of lead per dry standard cubic meter (0.00087 grains of lead per dry standard cubic foot).

(1) All process fugitive enclosure hoods except those specified for refining kettles and dryer transition pieces shall be ventilated to maintain a face velocity of at least 90 meters per minute (300 feet per minute) at all hood openings.

(2) Process fugitive enclosure hoods required for refining kettles in paragraph (a) of this section shall be ventilated to maintain a face velocity of at least 75 meters per minute (250 feet per minute).

(3) Process fugitive enclosure hoods required over dryer transition pieces in paragraph (a) of this section shall be ventilated to maintain a face velocity of at least 110 meters per minute (350 feet per minute).

(c) All process fugitive emission sources listed in paragraphs (a)(1) through (a)(6) of this section except those controlled by hoods meeting the requirements of paragraphs (b)(1) through (b)(3) of this section shall be located in a total enclosure that is ventilated to achieve an air velocity into the enclosure at all doorway openings of not less than 75 meters per minute (250 feet per minute). This enclosure shall be ventilated to a control device that shall not discharge to the atmosphere any gases that contain lead compounds in excess of 2.0 milligrams of lead per dry standard cubic meter (0.00087 grains per dry standard cubic foot).

(d) All dryer emission vents and agglomerating furnace emission vents shall be ventilated to a control device that shall not discharge to the atmosphere any gases that contain lead compounds in excess of 2.0 milligrams of lead per dry standard cubic meter (0.00087 grains per dry standard cubic foot).

(e) The standards for process fugitive sources are summarized in table 3.

TABLE 3.—SUMMARY OF STANDARDS FOR PROCESS FUGITIVE SOURCES

Fugitive emission source	Control device lead compound emission limit (milligrams per dry standard cubic meter)	Enclosed hood or doorway face velocity (meters/minute)	Citation
Control Option I:			
Smelting furnace and dryer charging hoppers, chutes, and skip hoists	2.0	[1] 90	§ 63.544(b)
Smelting furnace lead taps and molds	2.0	[1] 90	§ 63.544(b)
Smelting furnace slag taps and molds	2.0	[1] 90	§ 63.544(b)
Refining kettles	2.0	[1] 75	§ 63.544(b)
Dryer transition pieces	2.0	[1] 110	§ 63.544(b)
Agglomerating furnace process vents and product taps	2.0	[1] 90	§ 63.544(b)
Control Option II:			
Enclosed building ventilated to a control device	2.0	[2] 75	§ 63.544(c)
Applicable to Both Control Options:			
Dryer and agglomerating furnace emission vents	2.0	.....	§ 63.544(d)

[1] Enclosure hood face velocity applicable to those process fugitive sources not located in an enclosed building ventilated to a control device.
[2] Building doorway air velocity measured at all doorways that are normally open during operations.

§ 63.545 Standards for fugitive dust sources.

(a) Each owner or operator of a secondary lead smelter shall prepare and at all times operate according to a standard operating procedures manual that describes in detail the measures that will be put in place to control fugitive dust emission sources within the areas of the secondary lead smelter listed in paragraphs (a)(1) through (a)(5) of this section.

(1) Plant roadways;

(2) Battery breaking area;

(3) Furnace area;

(4) Refining and casting area; and

(5) Materials storage and handling area.

(b) The standard operating procedures manual shall be submitted to the Administrator or delegated authority for review and approval.

(c) The controls specified in the standard operating procedures manual shall at a minimum include the requirements of paragraphs (c)(1) through (c)(5) of this section.

(1) Plant roadways—paving of all areas subject to vehicle traffic and pavement cleaning twice per day of those areas, except on days when natural precipitation makes cleaning unnecessary or when sand or a similar material has been spread on plant roadways to provide traction on ice or snow.

(2) Battery breaking area—partial enclosure of storage piles, wet suppression applied to storage piles with sufficient frequency and quantity to prevent the formation of dust, and pavement cleaning twice per day; or total enclosure of the battery breaking area in a structure meeting the requirements of 40 CFR 265.1101(a) and (c) and ventilation of the enclosure to a control device.

(3) Furnace area—partial enclosure and pavement cleaning twice per day; or total enclosure in a structure meeting the requirements of 40 CFR 265.1101(a) and (c) and ventilation of the enclosure to a control device.

(4) Refining and casting area—partial enclosure and pavement cleaning twice per day; or total enclosure in a structure meeting the requirements of 40 CFR 265.1101(a) and (c) and ventilation of the enclosure to a control device.

(5) Materials storage and handling area—partial enclosure of storage piles, wet suppression applied to storage piles with sufficient frequency and quantity to prevent the formation of dust, vehicle wash at each exit from the area, and paving of the area; or total enclosure of the area in a structure meeting the requirements of 40 CFR 265.1101(a) and (c) and ventilation of the enclosure to a control device and a vehicle wash at each exit.

(d) The standard operating procedures manual shall require that daily records be maintained of all wet suppression, pavement cleaning, and vehicle washing activities performed to control fugitive dust emissions.

(e) No owner or operator of a secondary lead smelter shall discharge or cause to be discharged into the atmosphere from any building or enclosure ventilation system any gases that contain lead compounds in excess of 2.0 milligrams of lead per dry standard cubic meter (0.00087 grains of lead per dry standard cubic foot).

§ 63.546 Compliance dates.

(a) Each owner or operator of an existing secondary lead smelter shall achieve compliance with the requirements of this subpart no later than June 23, 1997.

(b) Each owner or operator of a secondary lead smelter that commences construction or reconstruction after June 9, 1994, shall achieve compliance with the requirements of this subpart by June 23, 1995 or upon startup of operations, whichever is later.

§ 63.547 Test methods.

(a) The following test methods in appendix A of part 60 of this chapter in paragraphs (a)(1) through (a)(5) of this section shall be used to determine compliance with the emission standards for lead compounds under §§ 63.543(a), 63.544(b), (c), and (d), and 63.545(e):

(1) Method 1 shall be used to select the sampling port location and the number of traverse points.

(2) Method 2 shall be used to measure volumetric flow rate.

(3) Method 3 shall be used for gas analysis to determine the dry molecular weight of the stack gas.

(4) Method 4 shall be used to determine moisture content of the stack gas.

(5) Method 12 shall be used to determine compliance with the lead compound emission standards. The minimum sample volume shall be 0.85 dry standard cubic meters (30 dry standard cubic feet) and the minimum sampling time shall be 60 minutes for each run. Three runs shall be performed and the average of the three runs shall be used to determine compliance.

(b) The following test methods in appendix A of part 60 listed in paragraphs (b)(1) through (b)(5) of this section shall be used, as specified, to determine compliance with the emission standards for total hydrocarbons under § 63.543(c), (d), (e), and (g):

(1) Method 1 shall be used to select the sampling port location to determine compliance under § 63.543(c), (d), (e), and (g).

(2) Method 2 shall be used to measure volumetric flow rate to determine compliance under § 63.543(g).

(3) The Single Point Integrated Sampling and Analytical Procedure of Method 3B shall be used to measure the carbon dioxide content of the stack gases to determine compliance under § 63.543(c), (d), and (e).

(4) Method 4 shall be used to measure moisture content of the stack gases to determine compliance under § 63.543(c), (d), (e), and (g).

(5) Method 25A shall be used to measure total hydrocarbon emissions to determine compliance under § 63.543(c), (d), (e), and (g). The minimum sampling time shall be 1 hour for each run. A minimum of three runs shall be performed. A 1-hour average total hydrocarbon concentration shall be determined for each run and the average of the three 1-hour averages shall be used to determine compliance. The total hydrocarbon emissions concentrations for determining compliance under § 63.543(c), (d), and (e) shall be expressed as propane and shall be corrected to 4 percent carbon dioxide, as described in paragraph (c) of this section.

(c) For the purposes of determining compliance with the emission limits under § 63.543(c), (d), and (e), the measured total hydrocarbon concentrations shall be corrected to 4 percent carbon dioxide as listed in paragraphs (c)(1) through (c)(2) of this section in the following manner:

(1) If the measured percent carbon dioxide is greater than 0.4 percent in each compliance test, the correction factor shall be determined by using the following equation:

$$F = \frac{4.0}{CO_2}$$

where:

F=correction factor (no units)

CO_2=percent carbon dioxide measured using Method 3B, where the measured carbon dioxide is greater than 0.4 percent.

(2) If the measured percent carbon dioxide is equal to or less than 0.4 percent, then a correction factor (F) of 10 shall be used.

(3) The corrected total hydrocarbon concentration shall be determined by multiplying the measured total hydrocarbon concentration by the correction factor (F) determined for each compliance test.

(d) Compliance with the face velocity requirements under § 63.544(b) and (c) for process fugitive enclosure hoods shall be determined by the following test methods in paragraph (d)(1) or (d)(2) of this section.

(1) Owners and operators shall calculate face velocity using the procedures in paragraphs (d)(1)(i) through (d)(1)(iv) of this section.

(i) Method 1 shall be used to select the sampling port location in the duct leading from the process fugitive enclosure hood to the control device.

(ii) Method 2 shall be used to measure the volumetric flow rate in the duct from the process fugitive enclosure hood to the control device.

(iii) The face area of the hood shall be determined from measurement of the hood. If the hood has access doors, then face area shall be determined with the access doors in the fully open position.

(iv) Face velocity shall be determined by dividing the volumetric flow rate determined in paragraph (d)(1)(ii) of this section by the total face area for the hood determined in paragraph (d)(1)(iii) of this section.

(2) The face velocity shall be measured directly using the procedures in paragraphs (d)(2)(i) through (d)(2)(vi) of this section.

(i) A propeller anemometer or equivalent device shall be used to measure hood face velocity.

(ii) The propeller of the anemometer shall be made of a material of uniform density and shall be properly balanced to optimize performance.

(iii) When the anemometer is mounted with the propeller shaft in a horizontal position, the threshold velocity of the anemometer shall not exceed 15 meters per minute (50 feet per minute) as determined by a procedure equivalent to that in Method 14 of appendix A of part 60.

(iv) The measurement range of the anemometer shall extend to at least 300 meters per minute (1,000 feet per minute).

(v) A known relationship shall exist between the anemometer signal output and air velocity, and the anemometer must be equipped with a suitable readout system.

(vi) Hood face velocity shall be determined for each hood during

normal operation with all access doors in the open position and by placing the anemometer in the plane of the hood opening.

(e) Owners and operators shall measure doorway air velocity to determine compliance with the doorway velocity requirement for enclosed buildings in § 63.544(c) using the procedures in paragraphs (e)(1) and (e)(2) of this section.

(1) Owners and operators shall use a propeller anemometer or equivalent device meeting the requirements of paragraphs (d)(2)(ii) through (d)(2)(v) of this section.

(2) Doorway air velocity into the building shall be determined for each doorway in the open position during normal operation by placing the anemometer in the plane of the doorway opening.

§ 63.548 Monitoring requirements.

(a) Owners and operators of secondary lead smelters shall prepare, and at all times operate according to, a standard operating procedures manual that describes in detail procedures for inspection, maintenance, and bag leak detection and corrective action plans for all baghouses (fabric filters) that are used to control process, process fugitive, or fugitive dust emissions from any source subject to the lead emission standards in §§ 63.543, 63.544, and 63.545, including those used to control emissions from building ventilation. This provision shall not apply to process fugitive sources that are controlled by wet scrubbers.

(b) The standard operating procedures manual for baghouses required by paragraph (a) of this section shall be submitted to the Administrator or delegated authority for review and approval.

(c) The procedures specified in the standard operating procedures manual for inspections and routine maintenance shall, at a minimum, include the requirements of paragraphs (c)(1) through (c)(12) of this section.

(1) Daily monitoring of pressure drop across each baghouse cell.

(2) Daily visual observation of baghouse discharge or stack.

(3) Daily visual inspection to ensure that dust is being removed from hoppers.

(4) Daily check of compressed air supply for pulse-jet baghouses.

(5) Daily visual inspection of isolation dampers for proper operation.

(6) Daily monitoring of cleaning cycle by observing meters or control panel instrumentation.

(7) Weekly visual inspection of bag cleaning mechanisms for proper functioning.

(8) Weekly check of bag tension on reverse air and shaker type baghouses.

(9) Monthly visual inspection of baghouse interior for air leaks.

(10) Monthly inspection of bags and bag connections.

(11) Monthly inspection of fans for wear, material buildup, and corrosion.

(12) Continuous operation of a bag leak detection system.

(d) The procedures specified in the standard operating procedures manual for maintenance shall, at a minimum, include a preventative maintenance schedule that is consistent with the baghouse manufacturer's instructions for routine and long-term maintenance.

(e) The bag leak detection system required by paragraph (c)(12) of this section, shall meet the specifications and requirements of paragraphs (e)(1) through (e)(5) of this section.

(1) The bag leak detection system must be capable of detecting particulate matter emissions at concentrations of 1.0 milligram per actual cubic meter (0.00044 grains per actual cubic foot) or less.

(2) The bag leak detection system sensor must provide output of relative or absolute particulate matter emissions.

(3) The bag leak detection system must be equipped with an alarm system that will alarm when an increase in particulate emissions is detected.

(4) For negative pressure or induced air baghouses, the bag leak detector must be installed downstream of the baghouse and upstream of any wet acid gas scrubber. For positive pressure baghouses, a bag leak detector must be installed in each baghouse compartment or cell. Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(5) The bag leak detection system shall be installed and operated in a manner consistent with available guidance from the U.S. Environmental Protection Agency or, in the absence of such guidance, the manufacturer's written specifications and recommendations for installation, operation, and calibration of the system. The calibration of the system shall, at a minimum, consist of establishing the relative baseline output level by adjusting the sensitivity and the averaging period of the device, and establishing the alarm set points and the alarm delay time. The system must be fully operational at the time of the initial lead compliance test required to demonstrate compliance with the applicable lead emission standard under §§ 63.543, 63.544, or 63.545. The owner or operator shall not adjust the sensitivity, averaging period, alarm set points, or alarm delay time after the initial lead compliance test unless a test is performed to demonstrate compliance with the applicable lead emission standard after the adjustments are made.

(f) The standard operating procedures manual required by paragraph (a) of this section shall include a corrective action plan that specifies the procedures to be followed in the case of a bag leak detection system alarm. The corrective action plan shall include, at a minimum, the procedures used to determine and record the time and cause of the alarm as well as the corrective actions taken to correct the control device malfunction or minimize emissions as specified in paragraphs (f)(1) and (f)(2) of this section.

(1) The procedures used to determine the cause of the alarm must be initiated within 30 minutes of the alarm.

(2) The cause of the alarm must be alleviated by taking the necessary corrective action(s) which may include, but not be limited to, paragraphs (f)(1)(i) through (f)(2)(vi) of this section.

(i) Inspecting the baghouse for air leaks, torn or broken filter elements, or any other malfunction that may cause an increase in emissions.

(ii) Sealing off defective bags or filter media.

(iii) Replacing defective bags or filter media, or otherwise repairing the control device.

(iv) Sealing off a defective baghouse compartment.

(v) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system.

(vi) Shutting down the process producing the particulate emissions.

(g) The owner or operator of a secondary lead smelter that uses a wet scrubber to control particulate matter and metal hazardous air pollutant emissions from a process fugitive source shall monitor and record the pressure drop and water flow rate of the wet scrubber during the initial test to demonstrate compliance with the lead emission limit under § 63.544(d). Thereafter, the owner or operator shall monitor and record the pressure drop and water flow rate at least once every hour and shall maintain the pressure drop and water flow rate no lower than 30 percent below the pressure drop and water flow rate measured during the initial compliance test.

(h) The owner or operator of a blast furnace or collocated reverberatory and blast furnace subject to the total hydrocarbon standards in § 63.543(c), (d), or (e), must comply with the requirements of either paragraph (h)(1) or (h)(2) of this section, to demonstrate

continuous compliance with the total hydrocarbon emission standards.

(1) *Continuous Temperature Monitoring*—(i) The owner or operator of a blast furnace or a collocated reverberatory furnace and blast furnace subject to the total hydrocarbon emission standards in § 63.543(c), (d), or (e) shall install, calibrate, maintain, and continuously operate a device to monitor and record the temperature of the afterburner or the combined blast furnace and reverberatory furnace exhaust streams consistent with the requirements for continuous monitoring systems in subpart A, General Provisions.

(ii) The owner or operator of a blast furnace or a collocated reverberatory furnace and blast furnace subject to the total hydrocarbon emission standards shall monitor and record the temperature of the afterburner or the combined blast furnace and reverberatory furnace exhaust streams every 15 minutes during the total hydrocarbon compliance test and determine an arithmetic average for the recorded temperature measurements.

(iii) To remain in compliance with the standards for total hydrocarbons, the owner or operator must maintain an afterburner or combined exhaust temperature such that the average temperature in any 3-hour period does not fall more than 28 °C (50 °F) below the average established in paragraph (h)(1)(ii) of this section. An average temperature in any 3-hour period that falls more than 28 °C (50 °F) below the average established in paragraph (h)(1)(ii) of this section, shall constitute a violation of the applicable emission standard for total hydrocarbons under § 63.543(c), (d), or (e).

(2) *Continuous Monitoring of Total Hydrocarbon Emissions*—

(i) The owner or operator of a secondary lead smelter shall install, operate, and maintain a total hydrocarbon continuous monitoring system and comply with all of the requirements for continuous monitoring systems found in subpart A, General Provisions.

(ii) Allowing the 3-hour average total hydrocarbon concentration to exceed the applicable total hydrocarbon emission limit under § 63.543 shall constitute a violation of the applicable emission standard for total hydrocarbons under § 63.543(c), (d), or (e).

§ 63.549 Notification requirements.

(a) The owner or operator of a secondary lead smelter shall comply with all of the notification requirements of § 63.9 of subpart A, General Provisions.

(b) The owner or operator of a secondary lead smelter shall submit the fugitive dust control standard operating procedures manual required under § 63.545(a) and the standard operating procedures manual for baghouses required under § 63.548(a) to the Administrator or delegated authority along with a notification that the smelter is seeking review and approval of the these plans and procedures. Owners or operators of existing secondary lead smelters shall submit this notification no later than December 23, 1996. The owner or operator of a secondary lead smelter that commences construction or reconstruction after June 9, 1994, shall submit this notification no later than 180 days before startup of the constructed or reconstructed secondary lead smelter, but no sooner than June 23, 1995.

§ 63.550 Recordkeeping and reporting requirements.

(a) Each owner or operator of a secondary lead smelter shall maintain for a period of 5 years, records of the information listed in paragraphs (a)(1) through (a)(8) of this section.

(1) The results of initial and subsequent compliance tests for lead compounds and total hydrocarbons.

(2) An identification of the date and time of all bag leak detection system alarms, their cause, and an explanation of the corrective actions taken.

(3) If an owner or operator chooses to demonstrate continuous compliance with the total hydrocarbon emission standards under § 63.543(c), (d), or (e) by employing the method allowed in § 63.548(h)(1), the records shall include the output from the continuous temperature monitor, an identification of periods when the 3-hour average temperature fell below the minimum established under § 63.548(h)(1), and an explanation of the corrective actions taken.

(4) If an owner or operator chooses to demonstrate continuous compliance with the total hydrocarbon emission standard under § 63.543(c), (d), or (e) by employing the method allowed in § 63.548(h)(2), the records shall include the output from the total hydrocarbon continuous monitoring system, an identification of the periods when the 3-hour average total hydrocarbon concentration exceeded the applicable standard and an explanation of the corrective actions taken.

(5) Records of maintenance, calibration, or other procedures required by this rule for any monitoring system used to demonstrate compliance with an applicable requirement.

(6) Any recordkeeping required as part of the practices described in the standard operating procedures manual required under § 63.545(a) for the control of fugitive dust emissions.

(7) Any recordkeeping required as part of the practices described in the standard operating procedures manual for baghouses required under § 63.548(a).

(8) Records of the pressure drop and water flow rate for wet scrubbers used to control metal hazardous air pollutant emissions from process fugitive sources.

(b) The owner or operator of a secondary lead smelter shall comply with all of the reporting requirements under § 63.10 of the General Provisions. The submittal of reports shall be no less frequent than specified under § 63.10(e)(3) of the General Provisions. Once a source reports a violation of the standard or excess emissions, the source shall follow the reporting format required under § 63.10(e)(3) until a request to reduce reporting frequency is approved.

(c) The reports required under paragraph (b) of this section shall include the information specified in paragraphs (c)(1) through (c)(6) of this section.

(1) The report shall include records of all alarms from the bag leak detection system specified in § 63.548(e).

(2) The report shall include a description of the procedures taken following each bag leak detection system alarm pursuant to § 63.548(f)(1) and (2).

(3) The report shall include the information specified in either paragraph (c)(3)(i) or (c)(3)(ii) of this section, consistent with the monitoring option selected under § 63.548(h).

(i) A record of the temperature monitor output, in 3-hour block averages, for those periods when the temperature monitored pursuant to § 63.548(h)(1) fell below the level established in § 63.548(h)(1).

(ii) A record of the total hydrocarbon concentration, in 3-hour block averages, for those periods when the total hydrocarbon concentration being monitored pursuant to § 63.548(h)(2) exceeds the relevant limits established in § 63.543(c), (d), and (e).

(4) The reports required under paragraph (b) of this section shall contain a summary of the records maintained as part of the practices described in the standard operating procedures manual for baghouses required under § 63.548(a) including an explanation of the periods when the

procedures were not followed and the corrective actions taken.

(5) The reports required under paragraph (b) of this section shall contain an identification of the periods when the pressure drop and water flow rate of wet scrubbers used to control process fugitive sources dropped below the levels established in § 63.548(g) and an explanation of the corrective actions taken.

(6) The reports required under paragraph (b) of this section shall contain a summary of the fugitive dust control measures performed during the required reporting period, including an explanation of the periods when the procedures outlined in the standard operating procedures manual pursuant to § 63.545(a) were not followed and the corrective actions taken. The reports shall not contain copies of the daily records required to demonstrate compliance with the requirements of the standard operating procedures manuals required under §§ 63.545(a) and 63.548(a).

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40 CFR Part 52

[IA–15–1–6829a; FRL–5210–5]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This final action approves the State Implementation Plan (SIP) revision submitted by the state of Iowa. The revision includes special requirements for nonattainment areas, compliance and enforcement information, and adoption of EPA definitions. These revisions strengthen the SIP with respect to attainment and maintenance of established air quality standards.

DATES: This action will be effective August 22, 1995 unless by July 24, 1995 adverse or critical comments are received.

ADDRESSES: Comments may be mailed to Christopher D. Hess, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and EPA Air & Radiation Docket and Information Center, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551–7213.

SUPPLEMENTARY INFORMATION: The state of Iowa operates a Federally approved SIP that implements various requirements of the Clean Air Act (Act) and the Code of Federal Regulations (CFR). Since the initial approval of its SIP in 1972, numerous revisions and updates have been made in response to Federal requirements.

In accordance with 40 CFR 51.103, the state of Iowa has requested approval of two SIP revisions under the authority and signature of the Governor's designee, Larry J. Wilson, Director, Iowa Department of Natural Resources (IDNR). Requests were received by the EPA on October 18, 1994, and January 26, 1995. Both of these submittals were deemed complete in accordance with the criteria specified in 40 CFR part 51, appendix V. The state has provided evidence of the lawful adoption of regulations, public notice, and public hearing requirements for each submittal.

Rule Revisions

A. Special Requirements for Nonattainment Areas

The state of Iowa currently has one nonattainment area, in Muscatine for SO_2. In response to the requirements of the Act, as amended in 1990, the state has adopted the following rules.

1. In IAC 567–22.5 (1), the state amends its definition of ''major stationary source'' to conform to the requirements of Part D of the Act. The Act provides, in general, that a source which emits, or has the potential to emit, 100 tons per year or more of a regulated pollutant is a major source. Part D provides lower cutoff levels for some nonattainment areas, depending on the classification of the area.

Specifically, in response to the following cited sections of the Act, the state has added the major source emissions thresholds for the following pollutants: Ozone precursors (section 182), ozone precursors in ozone transport regions (section 184), carbon monoxide (section 186), and PM_{10} (section 188).

2. In subrule 22.5(1)''f''(2), the state also amends the definition of ''net emissions increase'' as it relates to major sources for nonattainment areas. Previously, a net emissions increase was considered contemporaneous with the particular change if it occurred between January 1, 1978, and the date that the increase from the particular change occurred. The state now uses a date five years before construction of the particular change rather than the fixed date of January 1, 1978.

This revision, although not required as a result of the 1990 Amendments to the Act, is consistent with the EPA's requirements at 40 CFR 51.165(a)(1)(vi) relating to calculation of net emissions increases for permitting applicability purposes.

3. In subrule 22.5(1)''m,'' the state has expanded its definition of ''enforceable permit condition'' to include requirements of Title V operating permits. This recognizes that limitations in those operating permits will qualify as federally enforceable restrictions which can be utilized in determining source applicability in the state's permitting programs.

4. In subrule 22.5(2), the state updates its emission offset applicability provisions to conform with the requirements of the 1990 Amendments. In particular:

a. The reference to 40 CFR 81.316 is updated to include amendments through March 10, 1994, pertaining to particulate matter nonattainment areas.

b. In this same subrule, the state deletes the provision that previously allowed the director to relieve an applicant from the obligation of continuing to implement offset requirements of a nonattainment construction permit if an area is subsequently redesignated attainment or unclassified. This measure is necessary to help ensure maintenance of the air quality standards after an area is redesignated to attainment.

c. The state deletes the reference to secondary standard particulate matter nonattainment areas. This reflects the fact that the current particulate matter standards are the same for the primary and secondary standards.

d. The state adds a requirement for offsets in sulfur dioxide (SO_2) nonattainment areas in subrule 22.5(2)b. As discussed in more detail below, EPA has determined that this addition strengthens the SIP and is therefore approvable.

e. The state also deletes subrule 22.5(2)c which previously provided a ''loophole'' for sources in secondary particulate matter nonattainment areas to claim that offsets were not reasonably available. This action strengthens the SIP by requiring sources to achieve offsets that conform with the Act.

f. Due to the new 22.5(2)b and deletion of 22.5(2)c, the former 22.5(2) d, e, and f become 22.5(2) c, d, and e.

5. Rule 22.5(3) previously allowed a source in a secondary particulate matter nonattainment area to submit proposals for emission offsets *or* a demonstration that offsets were not reasonably

available with a permit application. In conjunction with the deletion of 22.5(2)c, the state now deletes the ability to submit a demonstration that offsets are not reasonably available. This strengthens the SIP by requiring, without exception, offsets in nonattainment areas. It also reflects the state's other revisions eliminating the distinction between primary and secondary particulate nonattainment areas.

6. Subrule 22.5(4)''b'' previously required an offset ratio of at least 1.25:1 for particulate emissions. The revision requires a ratio of greater than 1:1 for all nonattainment areas. Although the reduced ratio would represent a relaxation of the offset requirements for particulate matter nonattainment areas, there are currently no such areas in Iowa. In any newly designated PM_{10} nonattainment areas, the revised ratio would be consistent with the requirements of the Act.

7. In accordance with section 173 of the Act, the state adds a new rule that requires new or modified major sources to comply with the lowest achievable emission rate in nonattainment areas.

8. In 22.5(7), the state updates its rule to reflect appropriate revisions. With respect to compliance of existing sources, this subrule referenced a rescinded subrule. By inserting the reference ''rule 22.5,'' the state now clearly identifies that a new major source or major modification subject to the emission offset subrule shall be in compliance with applicable emission standards or an approved compliance schedule.

B. Compliance and Enforcement Information

In 58 FR 54677, dated October 22, 1993, the EPA announced that SIP calls pursuant to section 110(k)(5) of the Act would be issued in order to implement the monitoring requirements of section 114(a)(3) including the periodic monitoring requirements for operating permits pursuant to sections 502(b)(2) and 504. This SIP call is required, because existing SIPs are inadequate in that they may be interpreted to limit the types of testing or monitoring data that may be used for determining compliance and establishing violations.

On May 11, 1994, the EPA notified the Governor of Iowa that an SIP revision is necessary to meet the aforementioned requirements of the Act. In IAC 567–21.5, the state has added rules that fulfill this requirement.

1. In IAC 567–21.5, a new rule has been added providing that any credible evidence may be used for the purpose of establishing whether a violation has occurred at the source.

2. Subrule 21.5(1) specifies that information from the use of monitoring methods approved in the source's Title V operating permit, compliance test methods specified in IAC 567–25, and testing or monitoring methods approved in the source's construction permit is presumptively credible evidence of whether a violation has occurred at a source.

3. Subrule 21.5(2) identifies presumptively credible monitoring or testing methods.

4. The state also amends subrule 22.105(2)''i'' by adding a new subparagraph, (5). For purposes of submitting compliance certifications, this subrule specifies that an owner or operator is not prohibited from using monitoring as required by any specified compliance methods or as required by subrules 22.108(3)–(5) and incorporated into a Title V operating permit. The practical effect of this addition is that the SIP is now strengthened by providing for more extensive means of determining compliance and gathering enforcement information.

C. Miscellaneous Revisions

1. In IAC 567–20.2 the state adds the definition of ''volatile organic compound'' as found in 40 CFR 51.100(s) as amended through November 30, 1993.

2. With respect to emissions testing, the state adds two approved EPA definitions: ''EPA conditional method'' and ''EPA reference method.'' A conditional method describes any method of sampling that has been validated by the Administrator, but has not yet been published as a reference method. A reference method, in contrast, describes any method of sampling or analyzing published in the CFR. EPA Action:

EPA is taking final action to approve revisions submitted on October 18, 1994, and January 26, 1995, for the state of Iowa.

Insofar as the state's request involves new source review (NSR) in nonattainment areas, EPA is approving the revision because its overall effect is to strengthen the SIP. EPA recognizes that this revision does not address all of the requirements for NSR under the 1990 Amendments to the Act. As an example, the revision does not include a requirement, as a precondition to permit issuance, an analysis of alternatives to construction of a proposed source or modification which shows that the benefits of construction outweigh the environmental and social costs (section 173(a)(5)).

The state is required to submit a revision by October 10, 1995, for the SO_2 nonattainment area in Muscatine, Iowa. In addition to other requirements of Part D of the Act, the revision must meet all the requirements of section 173 relating to NSR. EPA anticipates that Iowa will submit a revision by the statutory deadline addressing the other NSR requirements. Because the Part D revision for Muscatine is not yet due, and Iowa currently has no additional nonattainment areas, EPA is approving the rule which the state submitted. However, if the state does not submit a complete and timely SIP, including a Part D NSR rule, or if EPA determines that Iowa's submission is not approvable, EPA will take appropriate action (either finding a failure to submit an SIP or disapproving the SIP).

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

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 Subpart 1, Part D of the CAA 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, EPA 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 regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

The Office of Management and Budget has exempted these actions from review under Executive Order 12866.

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 August 22, 1995. 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).)

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

List of Subjects in 40 CFR Part 52

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

Dated: May 2, 1995.

Dennis Grams,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401—7671q.

Subpart Q—Iowa

2. Section 52.820 is amended by adding paragraph (c)(61) to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

(61) On October 18, 1994, and January 26, 1995, the Director of the Iowa Department of Natural Resources submitted revisions to the State Implementation Plan (SIP) to include special requirements for nonattainment areas, provisions for use of compliance and enforcement information, and adoption of EPA definitions. These revisions fulfill Federal regulations which strengthen maintenance of established air quality standards.

(i) Incorporation by reference.

(A) Revised rules ''Iowa Administrative Code,'' effective November 16, 1994. This revision approves revised rules 567–20.2, 567–22.5(1)a, 567–22.5(1)f(2), 567–22.5(1)m, 567–22.5(2), 567–22.5(3), 567–22.5(4)b, 567–22.5(6), 567–22.5(7), 567–22.105(2), and new rule 567–21.5. These rules provide for enhanced monitoring, special requirements for nonattainment areas, and adopts EPA's definition of volatile organic compound.

(B) Revised rules, ''Iowa Administrative Code,'' effective February 22, 1995. This revision approves new definitions to rule 567–20.2. This revision adopts EPA's definitions of ''EPA conditional method'' and ''EPA reference method.''

(ii) Additional material.

(A) None.

[FR Doc. 95–15236 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 70

[CA 147–1–6995–a; FRL–5216–3]

Clean Air Act Final Approval of Title V Operating Permits Program Revisions; Final Approval of Amended Synthetic Minor Operating Permit Program as a State Implementation Plan Revision; Bay Area Air Quality Management District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is promulgating direct final approval of the title V operating permit program revisions adopted by the Bay Area Air Quality Management District (Bay Area, BAAQMD, or District) on February 1, 1995 and submitted to EPA on March 23, 1995. These revisions modify Bay Area's title V program as proposed for interim approval on November 29, 1994 by providing for optional permit shield provisions, clarifying permit application requirements, and making other minor program changes in response to local concerns. In this direct final action, EPA is also promulgating approval of revisions that Bay Area made to its synthetic minor operating permit program. The synthetic minor program allows for the issuance of federally enforceable state operating permits (FESOP) and was also proposed for approval on November 29, 1994. The synthetic minor amendments being approved in this notice clarify the District's permit modification procedures for synthetic minors. Upon approval, the amended synthetic minor regulations will be incorporated into Bay Area's portion of the State Implementation Plan (SIP). In order to extend the federal enforceability of synthetic minor operating permit conditions to hazardous air pollutants (HAP), EPA is also approving Bay Area's amended synthetic minor regulations pursuant to section 112(l) of the Clean Air Act (Act or CAA).

EFFECTIVE DATE: This action is effective on August 22, 1995 unless adverse or critical comments are received by July 24, 1995. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the rules and EPA's Technical Support Document for the amended title V and synthetic minor programs are available for public inspection at the following location: Operating Permits Section (A–5–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the regulations being incorporated by reference in today's rule are available for inspection at the following location: Air Docket (6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield (telephone 415/744–1249), Operating Permits Section (A–5–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background

On November 29, 1994, EPA proposed in the **Federal Register** to grant Bay Area's title V operating permits program interim approval (59 FR 60939) in accordance with title V of the Act (as amended in 1990) and 40 CFR part 70 (the title V implementing regulations). In the same notice, EPA proposed approval of Bay Area's synthetic minor program based on the June 28, 1989 (54 FR 27274) approval criteria for federally enforceable state operating permit programs. On February 1, 1995, Bay Area adopted revisions to Regulation 2, Rule 6 (Regulation 2–6) and the

District's Manual of Procedures, Volume II, Part 3 (MOP), which implement the District's title V and synthetic minor programs. These revisions were not made in response to the title V program deficiencies identified by EPA in the proposed rulemaking, but rather to address local issues and concerns. EPA is promulgating a direct final approval of the amendments to coordinate the effective date of the title V and FESOP programs (which are being promulgated in today's Final Rules Section) with the effective date of the revisions.

II. EPA Evaluation and Action

On March 23, 1995, the California Air Resources Board (CARB) submitted to EPA, on behalf of the Bay Area, revisions to the District's title V operating permits program. The revisions, adopted February 1, 1995 by the Bay Area, address local issues and concerns and were not adopted in response to EPA's November 29, 1994 proposed interim approval notice (59 FR 60939). The District's synthetic minor program revisions, also adopted on February 1, 1995, were submitted to EPA by CARB, on behalf of the Bay Area, on March 31, 1995. The synthetic minor revisions clarify the District's processing of synthetic minor permit modifications.

The EPA has evaluated the submitted rules and has determined that they are substantially consistent with 40 CFR part 70 and fully consistent with the June 28, 1989 approval criteria (54 FR 27274) for SIP-approved state operating permit programs. The following is a brief analysis of the key regulatory revisions being acted on in today's notice. (Please refer to the Technical Support Document for a complete analysis of the submission.)

A. Analysis of Submission

1. Title V Operating Permit Program

a. Federal Enforceability—Title V permits in the Bay Area will contain District, State, and federal requirements. Bay Area's regulation, prior to the February 1, 1995 revisions, interchanged the terms ''applicable requirement'' and ''federally enforceable requirement,'' causing District and State-only requirements to become federally enforceable. (See 59 FR 60942.) On February 1, 1995, Bay Area revised its regulations to ensure that District and State-only requirements would not automatically become federally enforceable. (See 2–6–305, 2–6–307, 2–6–311.)

b. Duty to Apply—EPA proposed source category-limited interim approval of Bay Area's title V program on November 29, 1994 because the program allows certain sources to remain out of the program for two years by deferring the duty to apply for a title V permit. On February 1, 1995, Bay Area revised the duty to apply section of its regulation to clarify eligibility and timing issues associated with this deferral of applications. The changes ensure that only smaller sources of emissions will receive the deferral (2–6–403.1). These changes are consistent with the source category-limited interim approval proposed in the November 29, 1994 **Federal Register** notice. The revisions further specify which sources are required to submit applications within three months from the effective date of Bay Area's title V program so that the District can meet federal requirements for initial permit issuance (2–6–404.7 and section 70.4(b)(11)).

c. Permit Applications—Bay Area made several revisions to its permit application requirements. The primary substantive revision relieves sources of the requirement to calculate and summarize emissions from units that emit quantities below given thresholds (2 tons per year of a regulated air pollutant and 1000 pounds per year of a hazardous air pollutant) (2–6–405.6). EPA stated in its proposed notice that it would accept emissions cut-offs of 2 tons per year for criteria pollutants and the lesser of 1000 pounds per year or the section 112(g) de minimis levels for hazardous air pollutants (HAP) as criteria used to establish insignificant activities. According to section 70.5(c), once an activity qualifies as insignificant under these cut-offs, a source need only list it on the permit application. Bay Area's approach is substantially consistent with EPA's interpretation of insignificant activities. (For further analysis, please refer to the Technical Support Document located in the docket and Bay Area's final title V interim approval notice published in today's Final Rules Section of the **Federal Register**.)

d. Insignificant Activities—As noted above, section 70.5(c) in part 70 defines insignificant activities as ''activities and emissions levels which need not be included in permit applications.'' Bay Area indicated in the program description for its initial title V submittal that sources listed as exempt or excluded from permitting in Regulation 2, Rule 1, section 113.3 and sections 114–128 constitute the District's list of insignificant activities (''November 1993 List''). (See November 16, 1993 submittal: Program Description, p.II–3; rule 2–6–405.4, adopted November 3, 1993; and Appendix B, Part III.) The threshold on the November 1993 List is 150 pounds per day, which exceeds the level that EPA has allowed to be insignificant; therefore, EPA noted this provision as an interim approval issue. (See 59 FR 60939, November 29, 1994.) In the February 1, 1995 revisions, rule 2–6–405.6 is unclear as to whether Bay Area intended to require the activities on the November 1993 List to be quantified on the permit application. For an interim period, EPA will allow Bay Area not to require quantification of emissions from units on the November 1993 List, unless the emissions are necessary for determining the applicability of requirements or establishing permit terms and conditions that assure compliance with the applicable requirements. (See MOP, section 2.1.2, subsection d (p.3–8), adopted February 1, 1995.) At the end of the two-year interim approval period, Bay Area must demonstrate that each of the activities on the November 1993 List meet EPA's criteria for insignificant activities in section 70.5(c) and revise the list to exclude activities and emissions that do not qualify as insignificant to ensure that such activities and emissions will be quantified on the permit application. EPA also recommends that the District clarify that any ''exemption'' or ''exclusion'' provided by Regulation 2, Rule 1 as referred to in rule 2–6–405.4.2 (February 1, 1995 version of Regulation 2–6) does not exempt sources from title V permitting requirements.

In addition, the February 1, 1995 version of Regulation 2–6 relieves sources emitting less than 2 tons per year of a regulated air pollutant or 1000 pounds per year of a hazardous air pollutant from having to quantify emissions. While the emissions cut-off approach is acceptable for defining insignificant activities, Bay Area must add a provision to Regulation 2–6 stating that information from insignificant activities may not be omitted from the permit application if it is necessary to determine the applicability of a requirement, to impose any applicable requirement, or to assess fees (section 70.5(c)). This addition will ensure that Bay Area's insignificant activities provisions will not interfere with determining whether and how a CAA requirement applies at a source.

e. Fees—Section 3 of the revised MOP specifies fees associated with permit shields, acid rain facility monitors, public notice, etc. These fees are in addition to those that EPA found adequate for full approval in its November 29, 1994 proposal. Part 70 gives the District discretion to establish fees as long as all direct and indirect

costs of the program are covered (section 70.9(b)).

2. Synthetic Minor Operating Permit Program

Bay Area added a definition for ''synthetic minor operating permit modification'' to section 232 of Regulation 2–6 and procedural requirements for such modifications in sections 421, 422, and 423. The definition and procedural requirements provide additional assurance that revisions made to federally enforceable permit conditions contained in a synthetic minor permit will be revised in accordance with the procedures established for initial issuance of the synthetic minor permit. These revisions are fully approvable since they are consistent with the five approval criteria for FESOP programs set out in the June 28, 1989 **Federal Register** notice. (See 59 FR 60939).

B. Final Action and Implications

The EPA is publishing this notice without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing approval of Bay Area's title V and synthetic minor program revisions should adverse or critical comments be filed. This action will be effective August 22, 1995, unless, within 30 days of its publication, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective August 22, 1995.

1. Title V Operating Permits Program

EPA is promulgating approval of the title V operating permit program revisions submitted to EPA by CARB on March 23, 1995. These revisions do not correct the deficiencies identified in the November 29, 1994 proposed interim approval, and hence, do not impact Bay Area's interim approval status. In order for the February 1, 1995 revisions to be fully approvable with respect to insignificant activities, Bay Area must revise Regulation 2–6 to: (1) State that the permit application may not omit any information necessary to determine the applicability of, or to impose, any applicable requirement, or to assess fees; and (2) clarify that the November 1993 List no longer defines insignificant activities, or correct the deficiencies associated with the November 1993 List (59 FR 60939).

2. Synthetic Minor Operating Permit Program

EPA is promulgating approval of the synthetic minor operating permit program revisions submitted to EPA by CARB on March 31, 1995. Bay Area has already begun to issue permits containing voluntarily accepted limits pursuant to the District's synthetic minor regulations as adopted on February 1, 1995 (synthetic minor provisions are contained within Regulation 2, Rule 6). If the District followed its own procedures, each of those permits was subject to public notice and prior EPA review. Therefore, EPA will consider all voluntarily accepted limits in any District permit issued pursuant to the February 1, 1995 version of Bay Area's synthetic minor program which is being proposed for direct final approval in today's **Federal Register**, to be federally enforceable upon promulgation of this rule provided that any such permit is submitted to EPA and accompanied by documentation that the approved procedures were followed. The EPA will expeditiously review individual permits to ensure their conformity to the program requirements.

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

III. Administrative Requirements

A. Docket

Copies of Bay Area's submittal and other information relied upon for the direct final actions are contained in docket number CA–BA–95–1–OPS maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this direct final rulemaking. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

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 population of less than 50,000.

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address revisions to Bay Area's existing operating permits program that was submitted to satisfy the requirements of 40 CFR part 70. Application for limits under Bay Area's synthetic minor provisions is voluntary and therefore does not create any new requirements. Because these approval actions do not impose any new requirements, I certify that they do not have a significant impact on any small entities affected.

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 the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated today 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. Executive Order 12866

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects

40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Environmental protection, Hazardous substances, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

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

Dated: May 25, 1995.

David P. Howekamp,

Acting Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(216)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(216) * * *

(i) * * *

(B) Bay Area Air Quality Management District.

(*1*) Amended Regulation 2, Rule 1, Section 129 adopted on February 1, 1995; Amended Regulation 2, Rule 6, Sections 232, 234, 310, 311, 403, 404, 420, 421, 422, 423 adopted on February 1, 1995.

* * * * *

PART 70—[AMENDED]

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

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

2. Appendix A to part 70 is amended by revising paragraph (b) to the entry for California to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

(b) Bay Area Air Quality Management District: submitted on November 16, 1993, amended on October 27, 1994, and effective as an interim program on July 24, 1995. Revisions to interim program submitted on March 23, 1995 and effective on August 22, 1995 unless adverse or critical comments are received by July 24, 1995. Approval of interim program, including March 23, 1995 revisions, expires July 23, 1997.

* * * * *

[FR Doc. 95–15037 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 70

[CA 77–1–6996; AD–FRL–5216–5]

Clean Air Act Final Interim Approval of the Operating Permits Program; Final Approval of State Implementation Plan Revision for the Issuance of Federally Enforceable State Operating Permits; Bay Area Air Quality Management District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating interim approval of the title V operating permits program submitted by the Bay Area Air Quality Management District (Bay Area, BAAQMD, or District) for the purpose of complying with federal requirements that mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources. In addition, EPA is promulgating final approval of a revision to Bay Area's portion of the California State Implementation Plan (SIP) regarding synthetic minor regulations for the issuance of federally enforceable state operating permits (FESOP). In order to extend the federal enforceability of state operating permits to hazardous air pollutants (HAP), EPA is also finalizing approval of Bay Area's synthetic minor regulations pursuant to section 112(l) of the Clean Air Act (CAA or Act). Finally, today's action grants final approval to Bay Area's mechanism for receiving delegation of section 112 standards as promulgated.

EFFECTIVE DATE: July 24, 1995.

ADDRESSES: Copies of Bay Area's submittals and other supporting information used in developing the final approvals are available for inspection (docket number CA-BA–94–1–OPS) during normal business hours at the following location: U.S. Environmental Protection Agency, Region IX, Air & Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the regulations being incorporated by reference in today's rule are also available for inspection at the following location: Air Docket (6102), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield (telephone 415/744–1249), Mail Code A–5–2, U.S. Environmental Protection Agency, Region IX, Air & Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (Act)), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70, require that states develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a federal program.

On November 29, 1994, EPA proposed interim approval of the operating permits program for Bay Area, California. See 59 FR 60939. The November 29, 1994 **Federal Register** document also proposed approval of Bay Area's interim mechanism for implementing section 112(g) and program for delegation of section 112 standards as promulgated. Public comment was solicited on these proposed actions. EPA received public comment on the proposal and is responding to those comments in this document and in a separate ''Response to Comments'' document that is available in the docket at the Regional office. In this notice, EPA is promulgating interim approval of Bay Area's operating permits program and approving the section 112(g) and section 112(l) mechanisms noted above.

On June 28, 1989 (54 FR 27274), EPA published criteria for approving and incorporating into the SIP regulatory programs for the issuance of federally enforceable state operating permits. Permits issued pursuant to a program meeting the June 28, 1989 criteria and approved into the SIP are considered

federally enforceable for criteria pollutants. The synthetic minor mechanism may also be used to create federally enforceable limits for emissions of hazardous air pollutants (HAP) if it is approved pursuant to section 112(l) of the Act.

In the November 29, 1994 **Federal Register** document, EPA also proposed approval of Bay Area's synthetic minor program for creating federally enforceable limits in District operating permits. In this notice, EPA is promulgating approval of the synthetic minor program for the Bay Area as a revision to Bay Area's SIP and pursuant to section 112(l) of the Act.

II. Final Action and Implications

A. Analysis of State Submission and Response to Public Comments

On November 29, 1994, EPA proposed interim approval of Bay Area's title V operating permits program as it was submitted on November 16, 1993 and amended on October 27, 1994. Since the time that EPA proposed interim approval, Bay Area adopted regulations to implement title IV of the Act. On September 21, 1994, Bay Area incorporated part 72 by reference into District Regulation 2, Rule 7. Regulation 2, Rule 7 was submitted to EPA on December 29, 1994, and it corrects the first program deficiency (i.e., acid rain definitions) identified in the proposed interim approval notice by incorporating the federal acid rain definitions by reference and by stating that ''if the provisions or requirements of 40 CFR Part 72 are determined to conflict with Regulation 2, Rule 6, the provisions and requirements of Part 72 shall apply and take precedence.''

EPA recently became aware that the November 29, 1994 proposal incorrectly identified District Regulation 1, sections 431–433. Those regulations are SIP-approved District breakdown provisions (September 2, 1981, 46 FR 43968) and are recognized by EPA.

EPA received comments on the proposed interim approval of the Bay Area program from three public commenters: New United Motor Manufacturing Inc. (NUMMI), BAAQMD, and the National Stone Association (NSA). Several interim approval issues set forth in the November 29, 1994 proposal were modified as a result of public comment. These changes are discussed below along with other issues raised during the public comment period. EPA's final action, as set forth in section II.B. below, is being revised from the proposed notice in response to public comment. EPA received no adverse public comment on the proposed approval of Bay Area's synthetic minor program or program for receiving section 112(l) standards as promulgated.

1. Section 112(g) Implementation

One commenter stated that in the absence of a final section 112(g) regulation, Bay Area should be allowed to use its existing air toxics program and de minimis levels to determine case-by-case Maximum Achievable Control Technology (MACT) for new, reconstructed, and modified sources. The commenter further stated that the broad statutory requirements of section 112(g) should not supersede Bay Area's existing toxics program.

EPA has received many comments on various state part 70 programs concerning this issue and agrees that it is not reasonable to expect the states and districts to implement section 112(g) before a rule is issued. EPA has therefore published an interpretive notice in the **Federal Register** regarding section 112(g) of the Act: 60 FR 8333 (February 14, 1995). This notice outlines EPA's revised interpretation of section 112(g) applicability prior to EPA's issuing the final section 112(g) rule. The notice states that major source modifications, constructions, and reconstructions will not be subject to section 112(g) requirements until the final rule is promulgated. EPA expects to issue the final section 112(g) rule in September 1995.

The interpretative notice further explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the federal rule so as to allow states time to adopt rules implementing the federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Bay Area must be able to implement section 112(g) during the period between promulgation of the federal section 112(g) rule and adoption of implementing District regulations.

In the November 29, 1994 **Federal Register** notice proposing interim approval for the Bay Area's title V program, EPA also proposed to approve the use of Bay Area's preconstruction review program as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption by the Bay Area of rules specifically designed to implement section 112(g). Since approval is intended solely to confirm that the District has a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that there will be no transition period.

Bay Area commented that EPA should allow California districts 18 months, rather than 12 months, to develop section 112(g) regulations following EPA's promulgation of the federal section 112(g) rule. Bay Area stated that 12 months is not sufficient time to both undergo the regulatory development process and prepare a section 112(l) equivalency package for approval of the District's regulation to be used in lieu of the federal section 112(g) rule.

EPA has approved an 18-month transition period in other states and does not see a unique reason to limit the Bay Area to 12 months. Therefore, EPA will allow Bay Area 18 months from the date of EPA's final section 112(g) rule to develop and submit district regulations for the implementation of section 112(g). If the final section 112(g) rule, however, eliminates the transition period, Bay Area must follow the implementation time lines set out in that rulemaking.

2. Certification by a Responsible Official

One commenter objected to EPA's statement, under program deficiencies, that any document submitted in conjunction with a title V permit must be certified by a responsible official. The commenter stated that part 70 specifies which documents must be certified and that requiring ''any document'' to be certified represents an overly strict interpretation of section 70.6(c)(1).

EPA disagrees that the requirement to certify ''any document'' required by the permit is either redundant or unwarranted. The use of the term ''any document'' is necessary to ensure that all documents required to be certified under part 70 will be certified. Including the language in section 70.6(c)(1) should not create any additional burden than if the documents were all specifically listed. As the Bay Area's program is currently written, only semiannual reports and annual compliance certifications need to be certified by a responsible official. The Bay Area's program fails to specify certification of other required documents such as progress reports associated with a compliance schedule (section 70.6(c)(4)) or prompt reports of permit deviations (section 70.6(a)(3)(iii)(B)). Adding a requirement consistent with section 70.6(c)(1) would correct such omissions.

On a related note, EPA believes that, in one respect, the language suggested

in the November 29, 1994 **Federal Register** proposal may have been an overly inclusive interpretation of section 70.6(c)(1). Section 70.6(c)(1) reads, ''Any document (including reports) required by a part 70 permit shall contain a certification by a responsible official * * *'' While the commenter focused on the words ''any document,'' EPA believes that the overly inclusive language in the proposed interim approval is the reference to any document submitted ''in conjunction with'' a permit. Therefore, Bay Area may substitute the phrase ''required by,'' rather than ''in conjunction with,'' when correcting the above deficiency.

3. Insignificant Activities

Two commenters responded to EPA's identification of deficiencies regarding Bay Area's insignificant activities list and significance thresholds. The commenters raised several points, the first being that EPA's recommended insignificance levels would impose unnecessary administrative burdens.

EPA does not agree that the cut-off levels proposed in the November 29, 1994 notice of 2 tons per year (tpy) for criteria pollutants and the lesser of 1000 pounds per year or the section 112(g) de minimis levels for hazardous air pollutants (HAP) would create an unreasonable administrative burden. Insignificant activities are relevant only during the initial application phase when the source has to determine what information must be included in its permit application. Regardless of the list of insignificant activities or the cut-off emissions levels, the source may not omit from its application any information that is necessary to determine applicability, impose an applicable requirement, or assess fees (section 70.5(c)).

EPA also disagrees that the requirement to describe emissions from activities not qualifying as insignificant is overly burdensome. First, sources can use reliable emissions factors rather than extensive testing and monitoring. Second, the source descriptions required by section 70.5(c)(3)(ii) need only include sufficient detail to determine fees and the applicability of requirements of the Act. Finally, in many cases, smaller units can be aggregated and described in general terms if such an approach would not interfere with determining whether and how an applicable requirement applies at a source.

A second point raised in comment was that the redesignation of Bay Area to attainment status for ozone justifies a higher insignificance threshold for criteria pollutants. EPA agrees that emissions cut-offs for insignificant activities should be based on area-specific circumstances and analysis. The proposed notice recommended a 2 tpy cut-off for criteria pollutants for the Bay Area because of the large number of sources and emissions in the District, the high population density, and the distinct relationship between regulatory compliance and air quality improvement in the Bay Area. While EPA is open to evaluating alternative emissions cut-offs, such a proposal must clearly demonstrate that the higher level of emissions are insignificant for the Bay Area.

An industry commenter also requested that EPA accept Bay Area's categorical permit exemption list as its list of insignificant activities. While part 70 allows state and local agencies to submit a list of insignificant activities and emissions levels for approval, this list must be accompanied by selection criteria that will assure insignificance with respect to federal applicable requirements (sections 70.4(b)(2) and 70.5(c)). The fact that the District has a preexisting exemption list does not constitute sufficient justification of insignificance. Because Bay Area has not provided EPA with justification for each categorical exemption, EPA does not have adequate information on which to evaluate the activities.

A fourth point raised in response to EPA's recommended insignificance thresholds was the suggestion that a single emissions cut-off be used to define insignificant activities for HAP-emitting sources. The commenter suggested that a single threshold would be more appropriate than the section 112(g) de minimis values since the Act uses a broad 10 tpy applicability threshold.

EPA recommended using the proposed section 112(g) de minimis levels because they define what EPA, through research and science, has determined to be significant enough to warrant review by the public and EPA on a facility-wide basis. EPA believes that the section 112(g) de minimis levels would more easily allow the permitting authority to verify independently the applicability of requirements and should serve as an upper bound on which activities may be excluded from permit applications. The same result may be achieved, however, with a single cut-off of 1000 pounds per year if the threshold is accompanied by a caveat that activities and emissions necessary for determining the applicability of, or imposing an applicable requirement on, the source may not be omitted from the permit application.

A fifth comment regarding insignificant activities was Bay Area's objection to adding an ''applicable requirement gatekeeper'' that excludes activities subject to an applicable requirement from classification as insignificant. Bay Area asserted that the applicable requirement gatekeeper for insignificant activities is too stringent since some state implementation plans (SIPs) contain requirements such as opacity limits that would generally apply to all activities at the facility regardless of size.

EPA understands Bay Area's concerns and believes that the applicable requirement gatekeeper can be added to Bay Area's program without nullifying the usefulness of insignificant activities. EPA recognizes that certain requirements approved into the SIP, such as opacity standards, are applicable not to specific emissions units, but instead to the facility as a whole. Therefore, the presence of an applicable opacity limit does not mean that every emissions unit at the facility must be described in the application since the applicability of the requirement is clear.

4. Notice to the Public and Affected States

Bay Area disagreed with the public and affected state notice deficiencies identified by EPA in the proposed interim approval notice. First, Bay Area objected to revising its program to include affected state notice provisions for Native American tribes since there is not currently a potentially affected tribe that is eligible for treatment as a state.

EPA is concerned about Bay Area's proposal to delay adoption of affected state notice provisions until tribes apply for state status. Although the federal rule that will enable tribes to apply for treatment as states has not yet been finalized, and there are no tribes currently eligible for treatment as a state under the Act, EPA believes that the likelihood of Native American tribes qualifying as affected states under part 70 is great and that Bay Area will ultimately need to revise its rule to address this outcome. Nonetheless, as an alternative to up-front adoption of affected state notice provisions, EPA will accept a commitment from Bay Area to: (1) initiate rule revisions upon notification from EPA that an affected tribe has applied for state status, and (2) provide affected state notice to tribes upon their filing for state status, that is, prior to the District's adoption of affected state notice rules. Second, Bay Area also objected to adding the phrase ''by other means if necessary to assure adequate notice to the affected public''

to the District's public notice procedures. Bay Area claimed that its existing public notice procedures already assure adequate notice to the affected public.

EPA acknowledges that the Bay Area has an extensive public notice process and that it is adequate in most circumstances. However, EPA also realizes that the United States, in general, and the Bay Area, in particular, consist of diverse communities with varying ties to the publications used for public notification. EPA proposed adding the phrase ''by other means if necessary to assure adequate notice to the affected public * * *'' to Bay Area's public notice provisions to give Bay Area the legal authority to expand its notification procedures if notice under existing procedures is ever inadequate. The additional language is not intended to require the Bay Area to expand its routine notification procedures, but rather to allow the District to take extra steps when circumstances dictate.

5. Alternative Emission Limits

Bay Area believes that EPA's concerns regarding alternative emission limits can be handled on a permit-by-permit basis rather than by revising the District's Manual of Procedures (MOP). Bay Area's MOP states that alternative emission control plans issued pursuant to District Regulation 8 may be incorporated into title V permits. In the proposed interim approval notice, EPA stated that the permit may contain an alternative emission limit only if it has been approved into Bay Area's SIP. The MOP provides no assurance that an alternative emission control plan in District Regulation 8 is SIP-approved before it is incorporated into a title V permit. In response, Bay Area commented that if the alternative emission control plan in District Regulation 8 has been approved into the SIP, it will become part of the federally enforceable portion of the permit; if it has not been approved into the SIP, it will become part of the state-only portion of the permit.

EPA finds this permit-by-permit approach acceptable. However, the current language in the MOP does not distinguish between alternative emission control plans in District Regulation 8 that have been approved into the SIP and alternative emission control plans in Regulation 8 that have not been approved into the SIP. Therefore, in order to correct this deficiency, the District must add a provision to the MOP (section 4.1) stating that only alternative emission control plans that have been approved into the SIP may be incorporated into the federally enforceable portion of the permit.

6. Emissions Trading

Bay Area commented that the emissions trading provisions of section 70.6(a)(10) should not be required for the Bay Area since the District's new source review program prohibits emissions increases at a facility without a case-by-case approval. EPA does not support Bay Area's position on this matter. Bay Area must include a provision consistent with section 70.6(a)(10) to ensure that the District can implement mandatory trading opportunities that may arise in specific federal requirements.

7. Particulate Matter (PM) Issues

The National Stone Association raised several issues regarding PM that were not relevant to EPA's proposed interim approval of Bay Area's operating permits program. Therefore, EPA is addressing these comments in the Response to Comments Document (located in the docket at the Regional Office) and not in this final interim approval notice.

B. Final Action

1. Title V Operating Permits Program

The EPA is promulgating interim approval of Bay Area's title V operating permits program as submitted on November 16, 1993 and amended on October 27, 1994. Bay Area must make the following changes to receive full approval:

(1) Provide a demonstration that each activity on Bay Area's insignificant activities list (See p. II–3 of program description, 2–6–405.4, and list in Appendix B.) is truly insignificant and is not likely to be subject to an applicable requirement. Alternatively, the District may establish emissions level cut-offs, in which activities emitting below the cut-offs would qualify as insignificant. In the latter case, the District must demonstrate that the cut-off emissions levels are insignificant compared to the level of emissions from and type of units that are required to be permitted or subject to applicable requirements. In addition, Bay Area must revise Regulation 2, Rule 6 to state that activities needed to determine the applicability of, or impose applicable requirements on, the facility may not qualify as insignificant activities. (§§ 70.5(c) and 70.4(b)(2))

(2) Include a term consistent with the part 70 definition of ''applicable requirement,'' and use that term consistently in rules 2–6–409.1, 2–6–409.2 and throughout the regulation. As currently written, Bay Area's regulation requires that ''all federal * * * air quality requirements'' be incorporated into permits (2–6–409.1); yet, the term is never defined. Bay Area's program does define ''applicable requirement'' (2–6–202), but the definition deviates from the part 70 definition and includes non-federally enforceable District and State requirements. Bay Area's definition of ''federally enforceable'' (2–6–207) appears to address the federal definition of ''applicable requirement''; however, it does not include the entire list of applicable requirements, and it is not clearly used in the permit content section of Regulation 2–6.

(3) Rule 2–6–409 must be revised to require that permit terms and conditions *assure compliance with all applicable requirements* (§ 70.7(a)(1)(iv)) and that permits contain emission limitations and standards (§ 70.6(a)(1)) and compliance certification requirements (§ 70.6(c)(1)) that assure compliance with all applicable requirements. As Regulation 2–6 is currently written, the District's title V permits only have to include requirements for testing, monitoring, reporting, and recordkeeping sufficient to assure compliance with the terms and conditions of the permit and the applicable requirements themselves. (2–6–409.1 and 2–6–409.2)

(4) Require that certifications by the responsible official affirmatively state that they are based on truth, accuracy, and completeness and that they are based on information and belief formed after reasonable inquiry. Bay Area must revise 2–6–405.9, 2–6–502, MOP (4.5 and 4.7), and any other certification provisions to ensure that both elements are explicitly required. (§ 70.5(d))

(5) Revise Regulation 2–6 to define and require notice to, affected states. Alternatively, Bay Area may make a commitment to: (1) Initiate rule revisions upon being notified by EPA of an application by an affected tribe for state status, and (2) provide affected state notice to tribes upon their filing for state status (i.e., prior to Bay Area's adopting affected state notice rules).

(6) Eliminate the phrase ''but not limited to'' from the definition of ''administrative permit amendment'' (2–6–201). Only changes identified in the rule and approved as part of Bay Area's program may be processed as administrative amendments. (§ 70.7(d)(1)(vi))

(7) Revise 2–6–404.3 to limit the universe of significant permit modification applications due 12 months after commencing operations to only those applications for revisions pursuant to section 112(g) and title I,

parts C and D of the Act that are not prohibited by an existing part 70 permit. Except in the above circumstances, a source is not allowed to operate the proposed change until the permitting authority has revised the source's part 70 permit. (§ 70.5(a)(1)(ii))

(8) In minor permit modification procedures, eliminate the extended review period (2–6–414.2) that is inconsistent with 2–6–410.2 and § 70.7(e)(2)(iv). This extension inappropriately lengthens the time that the source can operate under new conditions without a formal permit revision.

(9) Revise 2–6–412.1 to include notice ''by other means if necessary to assure adequate notice to the affected public.'' (§ 70.7(h)(1))

(10) Add a provision to the Manual of Procedures (section 4.1) stating that only alternative emission control plans that have been approved into the SIP may be incorporated into the federally enforceable portion of the permit. (§ 70.6(a)(1)(iii))

(11) Add emissions trading provisions consistent with § 70.6(a)(10), which requires that trading must be allowed where an applicable requirement provides for trading increases and decreases without a case-by-case approval.

(12) Add a requirement to Regulation 2–6 that any document required by a part 70 permit must be certified by a responsible official. (§ 70.6(c)(1))

(13) Revise 2–6–224 and 2–6–409.10 to specify that all progress reports must include: (1) Dates when activities, milestones, or compliance required in the schedule of compliance were achieved; and (2) an explanation of why any dates in the schedule of compliance were not or will not be met and any preventive or corrective measures adopted. (§ 70.6(c)(4) (i) and (ii))

(14) Revise section 4.5 of the MOP and add a provision to 2–6–409 to require that compliance certifications be submitted more frequently than annually if specified in an underlying applicable requirement. (§ 70.6(c)(4))

(15) Bay Area has indicated in its program description that it intends to process new units that do not affect any federally enforceable permit condition ''off-permit'' (Section II, p. 21 and Staff Report, pp. 3–4). However, Regulation 2–6 does not include any of the off-permit provisions required by §§ 70.4(b)(14) and (15). The part 70 off-permit provisions provide several safeguards such as notice to EPA and recordkeeping requirements that must be incorporated into Bay Area's program. In order to receive full approval in this regard, Bay Area may submit a letter revising its program description to indicate that it will not process new units ''off-permit'' or it may revise its rule to include the part 70 off-permit provisions.

(16) Revise 2–6–222 defining ''regulated air pollutant'' to be consistent with the federal definition (§ 70.2) and include pollutants subject to *any requirement* established under section 112 of the Act, including sections 112 (g), (j), and (r).

(17) In addition to the District-specific issues arising from Bay Area's program submittal and locally adopted regulations, California state law currently exempts agricultural production sources from permit requirements. In order for this program to receive full approval (and avoid a disapproval upon the expiration of this interim approval), the California Legislature must revise the Health and Safety Code to eliminate the exemption of agricultural production sources from the requirement to obtain a permit.

The scope of the Bay Area's part 70 program approved in this notice applies to all part 70 sources (as defined in the approved program) within the Bay Area, California, except any sources of air pollution over which an Indian tribe has jurisdiction. *See, e.g.,* 59 FR 55813, 55815–18 (Nov. 9, 1994). The term ''Indian tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' *See* section 302(r) of the Act; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

This interim approval, which may not be renewed, extends until July 23, 1997. During this interim approval period, the Bay Area is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a federal operating permits program in the Bay Area. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If the Bay Area fails to submit a complete corrective program for full approval by January 23, 1997, EPA will start an 18-month clock for mandatory sanctions. If the Bay Area then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the Bay Area has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the Bay Area, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that the Bay Area has come into compliance. In any case, if, six months after application of the first sanction, the Bay Area still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves the Bay Area's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the Bay Area has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of the Bay Area, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that the Bay Area has come into compliance. In all cases, if, six months after EPA applies the first sanction, the Bay Area has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if the Bay Area has not submitted a timely and complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to the Bay Area program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a federal permits program for the Bay Area upon interim approval expiration.

2. District Preconstruction Permit Program Implementing Section 112(g)

EPA is approving the use of Bay Area's preconstruction review program found in Regulation 2, Rule 2 as a mechanism to implement section 112(g) during the transition period between promulgation of EPA's section 112(g) rule and adoption by the Bay Area of rules specifically designed to implement section 112(g). EPA is limiting the

duration of this approval to 18 months following promulgation by EPA of the section 112(g) rule.

3. Program for Delegation of Section 112 Standards as Promulgated

Requirements for part 70 program approval, specified in 40 CFR section 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the District's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also promulgating approval under section 112(l)(5) and 40 CFR section 63.91 of Bay Area's program for receiving delegation of section 112 standards that are unchanged from the federal standards as promulgated. This program for delegations applies to both existing and future standards but is limited to sources covered by the part 70 program.

4. State Operating Permit Program for Synthetic Minors

EPA is promulgating full approval of Bay Area's synthetic minor operating permit program submitted to EPA by the California Air Resources Board, on behalf of the Bay Area, on February 28, 1994 (supplemented April 29, 1994). The synthetic minor operating permit program is being approved into Bay Area's SIP pursuant to part 52 and the five approval criteria set out in the June 28, 1989 **Federal Register** document (54 FR 27282). EPA is also promulgating full approval pursuant to section 112(l)(5) of the Act so that HAP emission limits in synthetic minor operating permits may be deemed federally enforceable.

Bay Area has already begun to issue permits containing voluntarily accepted limits pursuant to the District's synthetic minor regulations. If the District followed its own procedures, each of those permits was subject to public notice and prior EPA review. Therefore, EPA will consider all operating permits issued pursuant to Bay Area's synthetic minor regulations being approved in today's notice to be federally enforceable with the promulgation of this approval provided that Bay Area submit any permits that it wishes to make federally enforceable to EPA, accompanied by documentation that the procedures approved today have been followed. EPA will expeditiously review any individual permits so submitted to ensure their conformity to the program requirements. (See 57 FR 59931.)

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

III. Administrative Requirements

A. Docket

Copies of Bay Area's submittal and other information relied upon for the final interim approval, including the three public comment letters received and reviewed by EPA on the proposal, are contained in docket number CA–BA–94–1–OPS maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from review under Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under sections 502, 110, and 112 of the Act do not create any new requirements, but simply address operating permit programs submitted to satisfy the requirements of 40 CFR part 70. Because these actions do not impose any new requirements, they do not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

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

EPA has determined that the approval action promulgated today 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.

List of Subjects

40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Environmental protection, Hazardous substances, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

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

Dated: May 25, 1995.

David P. Howekamp,

Acting Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (217) and (218) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(217) New and amended regulations for the following APCDs were submitted on February 28, 1994, by the Governor's designee.

(i) Incorporation by reference.

(A) Bay Area Air Quality Management District.

(*1*) Amended Regulation 2, Rule 1, Sections 102, 129, 204, 213, 214, 215, 216, 217, 218, 219, 302, 408, 411 adopted November 3, 1993; and New Regulation 2, Rule 6, Sections 206, 207, 210, 212, 213, 214, 218, 222, 230, 231,

301, 311, 401, 402, 403, 404, 420, 421, 422, 602 adopted November 3, 1993.

(218) New and amended regulations for the Bay Area Air Quality Management District were submitted on April 29, 1994 by the Governor's designee.

(i) Incorporation by reference.

(A) New Regulation 2, Rule 6, Sections 310 and 423 adopted November 3, 1993.

* * * * *

PART 70—[AMENDED]

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

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

2. Appendix A to part 70 is amended by adding paragraph (b) to the entry for California to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

(b) *Bay Area Air Quality Management District:* submitted on November 16, 1993 and amended on October 27, 1994; interim approval effective on July 24, 1995, interim approval expires July 23, 1997.

* * * * *

[FR Doc. 95–15038 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

Evaporative Emission Enclosure Calibrations

CFR Correction

In title 40 of the Code of Federal Regulations, parts 86 to 99, revised as of July 1, 1994, in § 86.1217–90 the first paragraph (c) and the second paragraph (b) appearing on pages 909 and 910 should be removed.

BILLING CODE 1505–01–D

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7619]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATE: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
NEW ELIGIBLES—Emergency Program			
Illinois: Mansfield, village of, Piatt County	170549	May 11, 1995	June 9, 1978.
Michigan: Leoni, township of, Jackson County	260930	.....do	
South Dakota: Beadle County, unincorporated areas	460251	.....do	Jan. 10, 1978.
Michigan: Zeeland, charter township, of, Ottawa County.	260932	May 12, 1995	
Colorado: Fraser, town of, Grand County	080073	.....do	Mar. 26, 1976.
Michigan: Swan Creek, township of, Saginaw County	260888	.....do	
Oklahoma: Jackson County, unincorporated areas	400480	May 31, 1995	
NEW ELIGIBLES—Regular Program			
Alabama: Roanoke, city of, Randolph County	010348	May 3, 1995	July 5, 1982.
California: [1] Windsor, town of, Sonoma County	060761	May 11, 1995	
Illinois: Hainesville, village of, Lake County	171005	.....do	Feb. 1, 1984.
Indiana: Spiceland, town of, Henry County	180494	.....do	Sept. 4, 1987.
Ohio: Laura, village of, Miami County	390835	.....do	Mar. 15, 1995.
Illinois: Douglas County, unincorporated areas	170194	May 17, 1995	Mar. 4, 1985.
California: [2] Truckee, town of, Nevada County	060762	.....do	
Georgia: Buford, city of, Gwinnett and Hall Counties	130323	May 22, 1995	June 15, 1981.
Kentucky: Meade County, unincorporated areas	210169	May 31, 1995	Feb. 6, 1991.
REINSTATEMENTS			
Wisconsin: Oneida County, unincorporated areas	550579	June 10, 1975, Emerg.; Aug. 5, 1991, Reg.; Aug. 19, 1991, Susp.; May 22, 1995, Rein.	Aug. 5, 1991.
Ohio: Chilo, village of Clermont County	390067	Jan. 20, 1975, Emerg.; Jan. 16, 1981, Reg.; Mar. 15, 1993, Susp.; March 15, 1993, Susp.; May 25, 1995, Rein.	Aug. 15, 1989.
REGULAR PROGRAM CONVERSIONS			
Region I			
New Hampshire: Raymond, town of, Rockingham County.	330140	May 2, 1995, suspension withdrawn	May 2, 1995.
Region III			
Pennsylvania:			
Juniata, township of, Huntingdon County	421692	.....do	Do.
Upper Chichester, township of, Delaware County	420439	.....do	Do.
West Virginia: Mercer County, unincorporated areas	540124	.....do	Do.
Region VI			
Louisiana: Farmerville, town of, Union Parish	220325	.....do	Do.
Oklahoma:			
Bethany, city of, Oklahoma County	400254	.....do	Do.
Purcell, city of, McClain County	400104	.....do	Do.
Region I			
Connecticut: Prospect, town of, New Haven County	090151	May 16, 1995 suspension withdrawn	May 16, 1995.
Region II			
New York: Hammondsport, village of, Steuben County.	360775	.....do	Do.
Region III			
Pennsylvania: Huntingdon, borough of, Huntingdon County.	420486	.....do	Do.
Region V			
Indiana: Shoals, town of, Martin County	180166	.....do	Do.
Ohio:			
Gilboa, village of, Putnam County	390469	.....do	Do.
Metamora, village of, Fulton County	390840	.....do	Do.

[1] The Town of Windsor has adopted Sonoma County's (CID #060375) Flood Insurance Study and Flood Insurance Rate Map (FIRM) for flood insurance and floodplain management purposes. (Sonoma County's map date is 4–2–91, panels #530, 535, 540 and 545).

[2] The Town of Truckee has adopted Nevada County's Flood Insurance Study and Flood Insurance Rate Map (FIRM) dated July 19, 1982, Revised July 2, 1987 for flood insurance and floodplain management purposes (Panels No. 0508B and 0509B; County's CID No. 060210).

Code for reading third column: Emerg.—Emergency: Reg.—Regular; Susp.—Suspension, Rein.—Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Issued: June 15, 1995.

Frank H. Thomas,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 95–15453 Filed 6–22–95; 8:45 am]

BILLING CODE 6718–21–P

Proposed Rules

Federal Register
Vol. 60, No. 121
Friday, June 23, 1995

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 AGRICULTURE

Food and Consumer Service

7 CFR Parts 273 and 275

[Amdt. No. 366]

RIN 0584–AB75

Food Stamp Program: Quality Control Provisions of the Mickey Leland Childhood Hunger Relief Act

AGENCY: Food and Consumer Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes changes to Food Stamp Program regulations based on section 13951 of the Mickey Leland Childhood Hunger Relief Act. This action proposes to modify the quality control system of the Food Stamp Program in the following areas: timeframes for completion of all review activity, exclusion of variances resulting from the application of new regulations, the tolerance level for excessive error rates, the calculation of liability amounts, interest charges on liability amounts, good cause relief from liabilities, and the authority of the Administrative Law Judges to determine good cause. This action proposes to incorporate these legislative provisions into the Food Stamp Program regulations.

DATES: Comments must be received by August 22, 1995 to be assured of consideration.

ADDRESSES: Send comments to Quality Control Policy Section, Quality Control Branch, Food Stamp Program, Food and Consumer Service, USDA, 3101 Park Center Drive, Room 904, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: John H. Knaus, Chief, Quality Control Branch, Program Accountability Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Room 904, Alexandria, Virginia 22302, (703) 305–2472.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule at 7 CFR 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778

This action has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Implementation'' section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-QC liabilities) or Part 283 (for rules related to QC liabilities); (3) for program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 through 612). William E. Ludwig, Administrator of the Food and Consumer Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. The requirements will affect State and local agencies that administer the Food Stamp Program.

Paperwork Reduction Act

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. The estimate covers the time that a State agency will need to complete and transmit a checklist with each request for arbitration. As FCS will provide the content of the checklist to the State agency it is believed that any time spent on the design of the checklist will be minimal. The increase in burden hours reflects current requirements for the arbitration process which were not previously submitted for approval.

Title: Arbitration Checklist.

Description: Final regulations published January 21, 1988 (53 FR 1603) required State agencies to provide full documentation of the case and the policy(s) in question when requesting arbitration. The burden on the States for providing the documentation necessary for arbitration under the requirements of that final rule were not submitted for approval and inclusion under OMB No. 0584–0303 which covers existing reporting and recordkeeping requirements of 7 CFR part 275. The existing requirements in OMB No. 0584–0303 have been approved for use through July 31, 1994. Thus, the following does not represent a change in actual burden, but rather it reflects a redefinition of what is to be included as burden under 7 CFR part 275.

Description of Respondents: State agencies.

Estimated Annual Reporting and Recordkeeping Burden:

Section	Annual number of respondents	Annual frequency	Average burden per response hours	Annual burden hours
7 CFR 275:				
Existing	53	1	5.0236	266
Proposed	53	10	10.4	5512
Total Existing Burden Hours: 266				
Total Proposed Burden Hours: 5512				
Total Difference: 5246.				

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB # 0584–A679), Washington, DC 20503, ATTN: Wendy Taylor.

Background

Section 13951 of the Mickey Leland Childhood Hunger Relief Act, (the ''Leland Act''), Chapter 3, Title XIII of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66), revises sections 13(a)(1), 14(a), and 16(c) of the Food Stamp Act of 1977, as amended, (the ''Act'').

Section 13 of the Food Stamp Act is entitled ''Collection and Disposition of Claims''. Subsection (a)(1) of this section concerns the settlement and adjustment of claims, including the waiver, for good cause, of all or a portion of a quality control (QC) liability claim established against a State agency. This subsection also addresses the collection of interest on such liability claims. The Leland Act has amended the Food Stamp Act to remove the authority of the Secretary of Agriculture's designee, the Food and Consumer Service (''FCS''), to render good cause determinations. In addition, the timeframes for charging interest on any unpaid portion of a liability claim has been changed from two years to one year after the date that a bill for collection of a liability claim has been received by a State agency.

Section 14 of the Act is entitled ''Administrative and Judicial Review''. Subsection (a) of this section concerns the authority of Department of Agriculture Administrative Law Judges (ALJs) to review liability claims. The Leland Act has amended the Act to grant the ALJs the authority to determine, upon the request of a State agency, whether or not good cause exists to waive all or a portion of a liability claim.

Section 16 of the Food Stamp Act is entitled ''Administrative Cost-Sharing and Quality Control''. Subsection (c) of this section concerns payment accuracy and provides for liabilities against State agencies with payment error rates that exceed established tolerance levels, and provides for enhanced funding for State agencies with the lowest error rates. The Leland Act includes a number of provisions which replace key features of the existing liability/incentive system. The Leland Act establishes the national average error rate (also referred to as the national performance measure) for a given fiscal year as the tolerance level for individual State agency error rates for that year. Previously, the tolerance level was equivalent to the lowest national average error rate ever achieved, plus one percentage point. The Leland Act also modifies the calculation of sanction amounts. Prior to the Leland Act, a State agency with an individual error rate which exceeded the tolerance level had a liability equivalent to the difference between the State agency's error rate and the tolerance level, times the total value of food stamp issuance by the State agency for that fiscal year. The Leland Act modifies this calculation by the addition of another factor, the percentage by which a State agency's error rate exceeds the tolerance level or 1 (one), whichever is smaller. In addition, the Leland Act has modified the variance exclusion period for implementation of new regulations from 60/90 days to 120 days. The Leland Act has also changed the timeframes for the determination of final State agency error rates, the national average payment error rate, and the amounts of liability claims against State agencies. The Leland Act provides that these figures must be determined, and State agencies notified, no later than 30 days after the completion of the case review and arbitration process. The case review and arbitration process itself will now be required to be completed no later than 180 days after the end of the fiscal year. Finally, the Leland Act adds specific criteria into the language of section 16(c) of the Food Stamp Act for what will be considered ''good cause'' for the waiver of liability claims.

As part of the implementation of the new payment accuracy system, this proposed rule addresses amendments made by section 13951 of the Leland Act. Other provisions of section 13951 concerned with the timeframes involved in the administrative law judge appeal process have been published in a separate rulemaking.

Time Limits

Section 13951 of the Leland Act amends the Act by specifying that ''not later than 180 days after the end of the fiscal year, the case review and all arbitrations of State-Federal difference cases shall be completed''. This means that by March 29th (March 28th in leap years) each year, all State agency QC reviews must be disposed of and transmitted into the Integrated Quality Control System, all Federally subsampled QC reviews must be selected and completed by FCS, and any disparity between the State agency and Federal review findings must be resolved. It should be recognized that these activities can, and do, take place concurrently over the course of the annual review period, but that they cannot be completed simultaneously. The final Federal subsample cannot be selected until all State agency reviews have been disposed of, and final arbitration requests and determinations cannot be made until all Federal reviews have been completed, and the findings transmitted to the State agencies. Current regulations at 7 CFR 275.21 provide State agencies with a deadline of January 5th to dispose of all QC reviews, and regulations at 7 CFR 275.23(e)(8) specify that FCS must determine final payment error rates, and notify State agencies of these error rates by June 30th. Current regulations do not specify any deadline for the completion of the arbitration process. The Department has determined that the deadlines mandated by section 13951 of the Leland Act cannot be met without changes in the timeframes for the completion of QC reviews, and changes

in the arbitration system. The specific Departmental proposals for meeting the deadlines mandated by the Leland Act are contained in paragraphs entitled *Validation of State Agency Error Rates—§ 275.3(c), Arbitration—§ 275.3(c)(4),* and *Quality control review reports—§ 275.21.*

Validation of State Agency Error Rates—§ 275.3(c)

Current regulations at 7 CFR 275.3(c)(1)(iii), published February 17, 1984 (49 FR 6292), specify that FCS Regional Offices shall assist State agencies in completing case reviews that State agencies were unable to complete due to refusal on the part of a household to cooperate with the State agency QC reviewer. It was determined that FCS Regional Offices should assist State agencies in completing these difficult cases because of the importance that accepted statistical practices place on completion of the maximum possible percentage of sampled cases. Regulations require a State agency to complete 100 per cent of the cases sampled for QC review. Failure to complete 100 per cent of the sampled cases results in FCS adjusting a State agency's regressed error rate (see regulations at 7 CFR 275.23(e)(7)(iii)). Actual experience since the implementation of these regulations has shown that FCS Regional Offices are rarely able to gain the cooperation of a household which has refused to cooperate with the State agency, so that the results of this effort fail to justify the staff time and resources dedicated to it. These efforts have also had a negative impact on the efficiency of the State agency review process in some instances. Occasionally a household will misinform the FCS Regional Office that it is willing to cooperate with a State agency QC reviewer. When the State agency reviewer attempts to contact the household and complete the review the household again refuses to cooperate. The case must remain incomplete, and additional State agency staff time and resources have been expended in the process.

Section 13951 of the Leland Act amends the Food Stamp Act by specifying that ''not later than 180 days after the end of the fiscal year, the case review and all arbitrations of State-Federal difference cases shall be completed.'' The Department has concluded that this mandated deadline cannot be achieved without maximizing the efficiency of the QC process at both the State agency and Federal review levels. Because efforts on the part of FCS Regional Offices to assist State agencies in completing refusal-to-cooperate cases have proven to be ineffective the Department is proposing to amend regulations so that an FCS Regional Office will only assist a State agency in attempting to complete refusal-to-cooperate cases at the specific request of the State agency. This will allow the State agency, which is in the best position to evaluate the probability of success, to determine whether or not additional efforts should be made to complete reviews in which the household has refused to cooperate.

Arbitration—§ 275.3(c)(4)

Current regulations at 7 CFR 275.3(c)(4), published January 21, 1988 (53 FR 1603), and June 5, 1989 (54 FR 23950) contain the QC procedures for arbitrating differences in review findings between State agencies and FCS. Under current procedures a State agency which disagrees with the FCS review findings for an individual case has a maximum of 28 calendar days after receipt of the Federal findings to request reevaluation of the Federal findings by a Regional arbitrator. The Regional arbitrator has 30 days from the date of such a request to determine the correctness of the Federal findings or to notify the State agency of the status of the arbitration case. A State agency which disagrees with a Regional arbitrator's review findings for an individual case has a maximum of 28 calendar days after receipt of the Regional arbitrator's decision to request a reevaluation of the Regional arbitrator's decision by a National arbitrator. The National arbitrator has no established time limit for rendering decisions on the correctness of the Regional arbitrator's findings. As these timeframes would indicate, arbitration is a process which can routinely take as many as 86 days to reach the level of national arbitration. This estimate does not include possible delays when a Regional arbitrator requests additional information from a State agency. Nor does this figure contain any time estimate for the completion of the National arbitrator's evaluation, which can vary greatly depending on priorities, the workload of the National arbitrator, and the complexity of the case under review. Section 13951 of the Leland Act amends the Food Stamp Act by specifying that ''not later than 180 days after the end of the fiscal year [March 29th, or March 28th in leap years], the case review and all arbitrations of State-Federal difference cases shall be completed.'' Granting that the current arbitration process (not including the National arbitrator's evaluation) can routinely take 86 calendar days, it would be necessary for the arbitration process to begin earlier than January 2nd following the end of the fiscal year in order to insure meeting the March 29th deadline. Current regulations at 7 CFR 275.21(b)(2) provide State agencies with 95 days from the end of a sample month to complete all case reviews. This means that for the last sample month of the review period (September) the State agencies final deadline for disposing of all cases for the fiscal year is January 5th. The Department has concluded that the deadlines mandated by the Leland Act for the completion of arbitration for a fiscal year cannot be achieved without a restructuring of the current arbitration system.

The Department proposes to replace the current two-tier arbitration process with a one-tier arbitration system. State agencies would submit requests for arbitration to their appropriate FCS Regional offices within 10 days of receipt of the Federal QC findings for a case. The Department considers 10 days to be sufficient for a State agency to submit requests for arbitration because the State agency has already completed its review of households' circumstances before the Federal review was conducted. In preparing its cases for arbitration the State agency is simply identifying the specific case issue(s) in dispute between the State agency and FCS, and then ensuring that all verification, documentation, or other material supporting its findings are included in its submittal(s). The FCS Regional office QC staff may also submit to the arbitrator(s) a response to the State agency's request either agreeing with the State agency or explaining why the State agency's position is incorrect. The arbitrator(s) would be allowed a maximum of 35 calendar days from the date a request is received to render a decision regarding the accuracy of the Federal QC findings and disposition in a case. Prudence dictates that with the modification of the arbitration system to a single level of review, the reviewing official should be allowed the longest possible timeframe to render decisions.

The Department is proposing a number of other changes to the arbitration process to maximize the efficiency and accuracy of the system. The proposed regulations would limit requests for arbitration to those cases where the State agency's findings or disposition, as transmitted to the National Computer Center's (NCC) Integrated Quality Control System (IQCS), differ from the Federal findings or disposition transmitted to NCC. These cases are commonly referred to as ''disagree cases''. Under the proposed system State agencies will not be permitted to arbitrate cases where the

State agency's and Federal findings or disposition are the same. The purpose of the arbitration system is solely to resolve disagreements between the State agency's and Federal findings or disposition. State agencies have sometimes used the arbitration process as a way of registering disagreement with FCS policy on an issue. In these cases, the State agency agrees that the findings were correct, but it does not approve of the current Federal policy. The Department maintains that it is important to dedicate the limited resources and staff to those cases where there is a difference between the State agency's and FCS regional office's findings or disposition of an individual case, rather than those cases where all parties agree.

As a further expedient to maximizing the efficiency of the arbitration system, the Department is proposing that State agencies be required to submit specific documents and to ensure that their arbitration requests are complete, legible, and understandable. Over the past several fiscal years, requests for arbitration have frequently failed to provide arbitrators with the information needed to render decisions efficiently and accurately without time consuming requests for additional information or clarification. Common problems have included: illegible documents, blank photocopied pages, income calculations that cannot be duplicated, missing information regarding waivers in effect at the time of the review, and lack of documentation regarding the reporting and budgeting systems applicable to the case. When arbitrators confront these problems, they often must recontact State agencies and Regional offices for clarification. This process has become both time-consuming and confusing. As a solution to this problem, the Department proposes to require a standardized set of documents to accompany each State agency request. The Department proposes that the following items be required: (1) The request for arbitration and basic case information, which would include State, sample month and year, review number, review date, reporting and budgeting procedure, food stamp procedures for budgeting grants from the Aid to Families with Dependent Children Program, certification period, and calendar or fiscal month system; (2) Information about the certification action under dispute, which would include initial certification or recertification, legible certification work papers, legible State agency quality control work papers, and legible regional office quality control work papers; and (3) Information about the State agency's specific issues, which would include the element under dispute, regulatory citations, handbook citations, policy memoranda, legislative implementation dates, applicable waivers, and verification of facts. Each arbitration request would also include a checklist identifying the required items and indicating whether they were included with the request. The Department is particularly interested in soliciting comments about the need for such a checklist, the items that should appear on the checklist, and any alternatives that might be suggested to enhance the efficiency of arbitration.

If a State agency submitted an incomplete request for arbitration the arbitrator would render a decision based strictly on the merits of the available information. This does not mean that in instances where the State agency submits an incomplete request, and the FCS Regional office submits a response, the arbitrator(s) would automatically decide in favor of the Federal position because of the incomplete State agency request. Nor would this apply in the reverse situation. If a State agency's request for arbitration is complete but the FCS Regional office does not submit a response, the arbitrator(s) would not automatically decide in favor of the State agency's position because the Regional office had not submitted a response. The arbitrator(s) would make an independent judgement of the request, based upon whatever information the State agency and Regional office had provided. The proposed procedure would not permit a State agency to submit a partial request for arbitration and then supply supporting documentation over a ten day period.

In order to ensure that the QC process meets the legislated timeframes the Department is proposing that arbitration be limited to those cases where the State agency's findings and disposition were transmitted to the National Computer Center's (NCC) Integrated Quality Control System (IQCS) in a timely manner. The timeframes for the transmission of case findings to NCC is discussed in the paragraph entitled *''Quality control review reports—§ 275.21''*. The Department maintains that State agency reviews which are not completed and transmitted into the IQCS in a timely manner delay the selection and completion of FCS's Federal QC subsample reviews, and jeopardize the system's ability to meet the deadlines mandated by the Leland Act for the completion of all case review and arbitration activity. The Department proposes to restrict arbitration to those case reviews which have met the timeframes for transmittal to NCC to ensure that the QC process is completed in time to meet the mandated deadline of 180 calendar days after the end of the fiscal year. This restriction would not apply to one exceptional class of case reviews transmitted into the IQCS in an untimely manner. This class would be cases originally disposed of (in a timely manner) as incomplete due to refusal to cooperate on the part of the food stamp household. If the household later agrees to cooperate with QC and the review is completed and retransmitted to IQCS on a date after the original deadline for completing the case, but prior to the final deadline for disposing of all cases for the review period (December 29th under these proposed rules) the State agency would retain the right to request arbitration of the review findings of the completed case (assuming that the completed case is selected for FCS review, and the Federal review findings/disposition disagree with the State agency's findings/disposition). The Department is soliciting comments on additional categories of case reviews which should be excluded from the timeframe restrictions for arbitration.

Quality Control Review Reports—§ 275.21

Current regulations at 7 CFR 275.21(b), published February 17, 1984 (49 FR 6292), specify the timeframes for State agencies to dispose of and report the findings of cases selected for QC review. Under current procedures a State agency has 75 calendar days from the end of a sample month to dispose of 90 percent of the cases selected for review in that month; 100 percent of the cases must be disposed of within 95 days of the end of the sample month. As discussed in the section dealing with the arbitration process, this means that for the last sample month of the review period (September) the State agencies final deadline for disposing of all cases for the fiscal year is currently January 5th. The Department is proposing an arbitration system which will provide State agencies the opportunity to submit a request for arbitration of a case, to be received by the appropriate FCS regional office within 10 days from the date of receipt of the Federal findings, and 35 days for the arbitrator(s) to render a decision on a case. Thus, arbitration will be a process which could routinely take up to 45 days to complete. This is the minimum timeframe which the Department has deemed necessary to ensure an arbitration process which will render accurate determinations. Section 13951 of the Leland Act amends the Food

Stamp Act of 1977 by specifying that ''not later than 180 days after the end of the fiscal year [March 29th, or March 28th in leap years], the case review and all arbitrations of State-Federal difference cases shall be completed.'' Since the Department has concluded that the arbitration process requires a minimum of 45 calendar days to ensure accurate decisions being rendered, it would be necessary for the arbitration process to begin no later than February 12th following the end of the fiscal year in order to insure meeting the March 29th deadline. With the current State agency deadline for final case disposition of January 5th, this would leave FCS a total of 38 days to select the final Federal subsample of cases (approximately 1,580 cases, based on one month, or one twelfth, of the Fiscal Year 1991 Federal sample size of 18,982), accumulate the State agency and local office records necessary for the completion of the Federal reviews, complete the Federal review, and transmit the Federal review findings to the appropriate State agencies. The Department concludes that the deadlines mandated by the Leland Act for case completion (both State agency and Federal reviews) and arbitration cannot be achieved without restructuring the current timeframes for case completion.

The Department proposes to modify the deadline for State agencies to dispose of QC cases and transmit review findings to NCC's IQCS, by requiring that 100 percent of the cases selected for review be disposed of within 90 calendar days of the end of the sample month for which the cases were selected for review. State agencies would continue to be required to dispose of 90 percent of selected cases within 75 calendar days of the end of the sample month for which the cases were selected for review, as provided for in current regulations at 7 CFR 275.21(b)(2). Such a timeframe will result in a final annual deadline for the completion of State agency reviews of December 29th. This will provide FCS with approximately 45 days to complete the Federal case review process and transmit final Federal review findings to the State agencies. While the Department recognizes that the proposed timeframes for case completion may require dedication of additional resources by both State agencies and FCS, only a modification of the case completion timeframes and adherence to them, in conjunction with the redesign of the arbitration process, will allow sufficient time to meet the mandated deadlines contained in the Leland Act. Because of the importance which accepted statistical practices places on the completion of the maximum possible number of cases sampled for QC review, the Department is proposing to restate, in this section of the regulations, instructions currently contained in 7 CFR 275.12(g),

Disposition of Case Reviews

These instructions specify that without FCS approval a State agency shall not dispose of a case as not completed based solely on the fact that the State agency was unable to complete the case in time to meet the timeframes for the disposal of case reviews.

The Department is also proposing a conforming change to regulations at 7 CFR 273.2(d)(2), *Cooperation with QC Reviewer.* This section of the regulations, published February 17, 1984 (49 FR 6292), currently specifies that food stamp households which refuse to cooperate with a quality control reviewer shall be determined ineligible to participate in the Food Stamp Program until 95 days after the end of the annual QC review period, or until the household cooperates with the QC reviewer (whichever is earlier). This 95 day timeframe was established to correspond to the 95 day timeframe which the State agency has to dispose of QC reviews. Just as QC has a final deadline for the disposal of all reviews for an annual review period of 95 days after the end of the review period, a household which refuses to cooperate with QC is determined ineligible to participate in the Program until 95 days after the end of the annual review period. The Department is proposing to change the period of household ineligibility from 95 to 90 days after the end of the annual review period, in order to correspond to the proposed change to the State agencies timeframes for the disposition of QC reviews. The Department is proposing an additional conforming change to regulations at 7 CFR 273.2(f)(1)(ix). This section of the regulations, published February 4, 1987 (52 FR 3402), deals with the requirement that State agencies verify all factors of eligibility for households which have been terminated for refusal to cooperate with quality control. A reference is made in this section to the period of ineligibility lasting until the 95 day after the end of the annual review period. The Department is proposing to change the reference from 95 to 90 days after the end of the annual review period, in order to correspond to the proposed change to the State agencies timeframes for the disposition of QC reviews.

Variances Excluded From Error Analysis—§ 275.12(d)(2)

Prior to the Leland Act, section 16(c)(3) of the Food Stamp Act specified that any errors resulting from the application of new regulations promulgated under the Act during the first 60 days (or 90 days at the discretion of the Secretary) from the required implementation date of such regulations shall be excluded from the payment error rate. Section 13951 of the Leland Act amends the Act by changing the timeframe for excluding these errors from 60 (or 90) days, to 120 days. In response to this change the Department is proposing a regulatory change at 7 CFR 275.12(d)(2)(vii) to reflect the new timeframe for excluding variances resulting from the promulgation of new regulations.

State Agencies' Liabilities for Payment Error—Fiscal Year 1986 and Beyond—§ 275.23(e)(4)

Current regulations at 7 CFR 275.23(e)(4), published November 27, 1991 (56 FR 60045), specify a payment error rate tolerance level for any fiscal year to be one percentage point added to the lowest national performance measure announced up to and including that fiscal year. A State agency which exceeds this tolerance level is subject to a liability claim equivalent to the difference between the State agency's payment error rate and the tolerance level, multiplied by the total value of the allotments issued in the fiscal year by the State agency. Section 13951 of the Leland Act establishes a new system of payment error rate goals and consequences. The payment error rate tolerance level, beginning in Fiscal Year 1992 and applying to Fiscal Year 1992 and all subsequent fiscal years, is the national performance measure for the fiscal year. The national performance measure continues to be defined as the sum of the products of each State agency's payment error rate times that State agency's proportion of the total value of national allotments issued for the fiscal year using the most recent issuance data available at the time the State agency is notified of its payment error rate. A State agency which exceeds this tolerance level is now subject to a liability claim equivalent to the total value of the allotments issued in the fiscal year by the State agency, multiplied by a factor which is the lesser of (1) the ratio of the amount by which the payment error rate of the State agency for the fiscal year exceeds the national performance measure for the fiscal year, to the national performance measure for the fiscal year,

or (2) one. This figure is then multiplied by the amount by which the payment error rate of the State agency for the fiscal year exceeds the national performance measure for the fiscal year.

The Department is proposing changes to regulations at 7 CFR 275.23(e) to revise current subparagraph (4) to reflect the fact that the sanction system mandated by the Hunger Prevention Act of 1988 (Pub. L. 100–435, enacted September 19, 1988) (the ''Hunger Prevention Act'') now applies only to Fiscal Years 1986 through 1991. A new paragraph will be added to reflect the sanction system mandated by the Leland Act for Fiscal Year 1992, and all subsequent fiscal years. In addition, the Department proposes to continue the current policy under which, once announced, the national performance measure for a fiscal year will not be subject to change. The Leland Act mandates that within 30 days of the completion of the case review and arbitration process for a fiscal year (which itself must be completed within 180 days of the end of the fiscal year) the Department shall determine *final* error rates, the national performance measure, and the amounts of liability claims against State agencies [emphasis added]. The Department concludes that the intent of the Leland Act is that once individual State agency error rates, and the national performance measure are announced, they are final, and that adjustments to these figures cannot be considered.

Good Cause—§ 275.23(e)(6)

The Food Stamp Act of 1977, as amended by the Hunger Prevention Act, allows relief from all or a part of a Quality Control liability as established under § 275.23(e)(4) when a State agency can demonstrate that a part or all of an excessive error rate was due to an unusual event which had an uncontrollable impact on the State agency's payment error rate. The legislative history for current regulations governing good cause provides that ''The purpose of good cause under the new system is to allow the Secretary the discretion to provide relief when a State with otherwise effective administration has faced an unusual event with a large uncontrollable impact on errors.'' (House Report 100–828, part 1, page 34).

Although the Leland Act transfers the authority to grant good cause relief from the Secretary of Agriculture to the Department's Administrative Law Judges (ALJs), the intent as to what constitutes good cause has not changed. Congress' intent was made clear in the legislative history accompanying the Leland Act which states, ''It is the Committee's intent that the new national performance measure will provide relief for those factors that are not unique to any one state agency, such as the effects of recession or program changes. However, the Committee recognizes that there will be unusual events with an uncontrollable impact on errors which affect *state agencies with otherwise effective program administration* (emphasis added). The Committee expects that these *individual state situations* (emphasis added) will be addressed through the good cause waiver procedures. The Committee also expects that the Secretary's determination on states' good cause waiver requests will be based on good cause criteria, and not on such factors as budget considerations.'' (House Report 103–111, pg.12). Other than the provision that the determination to waive all or part of a Quality Control liability will be made by an ALJ, this intent was adopted by the Conference Substitute. (Statement of Managers). The language of these reports reaffirms Departmental policy as established under the provisions of the Hunger Prevention Act.

The Department concludes, therefore, that good cause relief is intended to ensure that a State agency which otherwise effectively administers the Food Stamp Program is not held liable for that portion of an excessive error rate caused by an unusual event which has an uncontrollable impact on a State agency's payment error rate.

The Leland Act provides good cause consideration for the following unusual events: (A) a natural disaster or civil disorder that adversely affects Food Stamp Program operations; (B) a strike by employees of a State agency who are necessary for the determination of eligibility and processing of case changes under the Food Stamp Program; (C) a significant growth in food stamp caseload in a State prior to or during a fiscal year, such as a 15 percent growth in caseload; (D) a change in the Food Stamp Program or other Federal or State program that has a substantial adverse impact on the management of the Food Stamp Program of a State; and (E) a significant circumstance beyond the control of the State agency.

This proposed rulemaking adopts the unusual events which qualify for consideration under good cause relief. As noted above, the legislative history makes clear that good cause relief based on the impact of unusual events is limited to *individual state situations*, and that allowances for those situations that are not unique to any one state are made via the national performance measure.

The effects of recession and program changes are specifically identified in the legislative history as factors that are not considered unique to any one state. Program changes have therefore been designated both as an unusual situation for which good cause relief will be considered and as a condition that is not unique to one state. From this report language, the Department concludes Congress' intent was that the five situations are considered ''unusual events'', appropriate for good cause relief, only if they exceed a national norm.

The preamble to current regulations published September 28, 1992, (57 FR 44482) discusses further those situations that will not be considered for good cause relief.

Current regulations at § 275.23(e)(6)(i) describe the criteria and methodology under which FCS will grant good cause waivers. While the Secretary or the Secretary's designee will no longer be making the final determination in good cause appeals, FCS retains the authority to establish criteria under which good cause is evaluated. The Department wishes to make it clear that current criteria and methodology, with modifications, will serve as guidelines for both FCS and the ALJ to assess, evaluate and respond to claims by the State agency for a good cause waiver of liability in conjunction with the appeals process. As under current regulations, an alternate methodology will continue to be used for certain events when a State agency provides insufficient information to demonstrate using factual analysis that the unusual event had an uncontrollable impact on the error rate. However, the Department is proposing modifications to these alternate methodologies. While current procedures take into account the duration of an unusual event, they do not measure the degree of impact that the unusual event has on Program operations. As a result, a Federally-declared disaster, for example, is treated the same regardless of size of the counties affected or amount of issuances for those counties. The Department is proposing an alternate methodology that will take into account both the duration of the unusual event and the magnitude or intensity of the unusual event. The alternate methodologies have also been modified to include specific procedures for calculating waiver amounts to ensure equity and consistency in these determinations. The following is a summary of the modifications to the alternate methodologies:

Disasters/Civil Disorders and Strikes

Duration will be measured by the number of months the event had an adverse impact on program operations. Intensity of these unusual events will be a proportional measurement of the issuances for the counties affected to the State's total issuance. The amount of the waiver of liability will be determined using the following linear equation: Ia/Ib × [M/12 or Mp/18] × L where; Ia is the issuance for the first full month immediately preceding the unusual event for the county affected; Ib is the State's total issuance for the first full month immediately preceding the unusual event; M/12 is number of months in the subject fiscal year that the unusual event had an adverse impact on program operations; Mp/18 is the number of months in the last half (April through September) of the prior fiscal year that the unusual event had an adverse impact on program operations; L is the total amount of the liability for the fiscal year.

For example, a tornado hits County A on 5/15, and the County is declared a Federal disaster area. Program operations in this county were adversely impacted for 3 months. In addition, a significant number of program staff from County B were diverted for 1 month to handle the crises in County A. Issuance figures for the month of April were: 2,000,000 (A); 1,900,000 (B); 38,500,000 (Statewide). The liability for the fiscal yr. was $3,300,000. The above formula is applied as follows: County A—[2,000,000/38,500,000] × 3/12 × 3,300,000 OR; .05195 × .25 × 3,300,000 = $42,858 credit to the liability. County B—[1,900,000/38,500,000] × 1/12 × 3,300,000 OR; .04935 × .08333 × 3,300,000 = $13,571 credit to the liability. Total credit to the liability is $56,429 ($42,858 + $13,571). This results in a revised liability for the State agency of $3,243,571 ($3,300,000—$56,429).

Significant Growth in Food Stamp Caseload

Duration and intensity will be measured by the degree to which caseload growth, statewide, exceeds 15 percent during the 12 month period from April of the prior fiscal year through March of the subject fiscal year, and by the degree to which a State's error rate exceeds the national performance measure. The amount of waiver of liability will be determined using a ratio of the percentage of caseload increase from a 12 month base period to the percentage the State's error rate exceeds the national performance measure.

This proportional measurement is based on procedures similar to the ''sliding scale'' used for the determination of liability amounts, and incorporates a floating national average which accounts for those factors that are common to all States. Using the error rate in this calculation allows greater consideration for a State agency that effectively manages caseload growth. As a result, a State agency with an error rate barely exceeding the national performance measure and an 18 percent increase in caseload growth will receive a proportionally larger waiver amount than a State agency with the same percentage of caseload growth but with an error rate greatly exceeding the national performance measure.

Under this alternate methodology, requisite caseload growth will be determined statewide rather than by individual counties. The Department recognizes that an individual county, because of its size, may drive the error rate for the State as a whole. The State agency may still use the impact of caseload growth in individual counties on the State's error rate to pursue good cause relief under the primary criterion. With the improvements in automated systems for data analysis, State agencies should have little difficulty in demonstrating the impact on the error rate when the impact is significant. The Department has designed the alternate methodology for use when the impact of an unusual event on the error rate is more difficult to isolate and distinguish.

Caseload growth occurring in the last half of the subject fiscal year will not be considered under the alternate methodology. The Department believes caseload growth occurring in the six month period prior to the subject fiscal year and in the beginning of the subject fiscal year will have a greater potential for disrupting Program operations as more months will be affected than will caseload growth occurring at the end of the fiscal year. For example, an increase in caseload growth prior to the subject fiscal year will have an impact on the error rate for the entire 12 months while caseload growth in the last month of the fiscal year will have an impact for only 1 month. If the State agency can demonstrate the effects of caseload growth in the last half of the subject fiscal year, it may do so under primary criterion.

The Department is proposing to modify the alternate methodology by using an average of 12 months as the base period from which caseload growth is measured rather than the 1 month base period that is currently used. An average of 12 months takes into account normal fluctuations in growth occurring over a period of time, and provides a more accurate indication of actual growth than does 1 month.

These methodologies are described in full in the regulatory section of this proposed rule.

In the application of the criteria and methodology, the mere existence of an unusual event specified under good cause relief is not, by itself, sufficient to establish a determination of good cause. Congressional intent is explicit in stating that a determination of good cause is contingent upon the following 3 conditions:

(1) An unusual event must occur. As previously stated, good cause relief is only appropriate for events affecting individual State agencies and exceeding a national norm. The national performance measure which floats from year to year provides relief for those factors that are common to all States. Certain events may be common to all States but have a significantly different impact on State agencies for a variety of reasons. For example, while all State agencies are required to implement new regulations, an individual State agency may be disproportionately affected by the program change due to the State's caseload demographics. New regulations affecting Native American households on reservations, for instance, would have an extensive impact on State agencies with a large population of such food stamp households. In these situations, the State agency needs to demonstrate the disproportionate effect caused by the unusual event. Good cause relief will be considered to the extent the unusual event has an uncontrollable impact on a State's error rate beyond the relief that is already provided through the national performance measure.

(2) The event must have an uncontrollable impact on errors. For example, during the middle of a review period, several counties within a state are declared Federal disaster areas due to massive flooding. This disaster occurs shortly after the expiration of the variance exclusion period for a new regulation which the State agency implemented timely but incorrectly. Subsequent to the disaster, there is a significant increase in the error rate. Data analysis show that the increase in the error rate was attributable to the State's incorrect implementation of the regulation. Even though there was a Federally declared disaster, a good cause determination is not appropriate, in this example, because the increase in the error rate resulted from a factor that was not associated with the unusual event. Good cause relief will be considered only for that portion of the

error rate/liability attributal to the unusual event.

(3) The event must affect a State agency with otherwise effective Program administration. Under current regulations, otherwise effective administration is measured and evaluated by the State's error rate together with any other available error rate data immediately before and after the unusual event, and by determining the impact of the unusual event on the error rate. With this proposed rulemaking, the Department is modifying this measurement to take into consideration the degree to which the error rate exceeds the national performance measure.

FCS Timeframes—§ 275.23(e)(8)

Prior to the Leland Act, section 16(c)(5) of the Food Stamp Act specified that the Secretary must make the determinations regarding any possible incentive payments or claims, and notify the State agencies of these determinations, within nine months following the end of each fiscal year. Section 16(c)(6) specified that at the same time that the State agencies are informed of their error rates and possible incentive payments or claims, that the Secretary shall announce the national performance measure (the sum of the products of each State agency's error rate times that State agency's proportion of the total value of national allotments issued for a fiscal year).

Section 13951 of the Leland Act amends the Food Stamp Act by specifying that: ''not later than 180 days after the end of the fiscal year, the case review and all arbitrations of State-Federal difference cases shall be completed. Not later than 30 days thereafter, the Secretary shall determine final error rates, the national average payment error rate, and the amounts of payment claimed against State agencies; and notify State agencies of the payment claims.'' In response to this change the Department is proposing a regulatory change at 7 CFR 275.23(e)(8) to reflect the new timeframes for the completion of the QC review process for a fiscal year.

Interest Charges—§ 275.23(e)(9)

Prior to the Leland Act, section 13(a)(1) of the Food Stamp Act specified that interest charges on any unpaid portion of a liability claim would accrue from the date of the decision on an administrative appeal of the claim, or from the day two years after the date the bill for the claim was received by the State agency, whichever was earlier. Section 13951 of the Leland Act amends the Food Stamp Act by changing the timeframe for the accruing of interest charges from two years to one year. The Food Stamp Act now specifies that interest on any unpaid portion of the claim shall accrue from the date of the decision on the administrative appeal, or from the day that is one year after the date the bill is received, whichever is earlier, until the date the unpaid portion of the payment is received. In response to this change the Department is proposing a regulatory change at 7 CFR 275.23(e)(9) to reflect the new timeframe of one year.

In addition, the Department is taking the opportunity to make a technical correction to the language in this paragraph of the regulations. The current regulations specify that interest will accrue from the date that a State agency receives the bill for the liability claim unless the State agency appeals the claim ''under § 276.7 of the regulations''. Since regulations at 7 CFR 275.23(e)(9) regarding interest charges were published (November 27, 1991) (56 FR 60045) the administrative appeals process for liability claims has been modified to provide for appeal to a Departmental Administrative Law Judge. The procedures for appeal of claims to a Departmental Administrative Law Judge are contained in 7 CFR Part 283 of the regulations. The Department proposes to change the reference to the appeal process contained in 7 CFR 275.23(e)(9) from ''under § 276.7 of the regulations'' to ''under Part 283 of the regulations''.

Miscellaneous Technical Corrections

The Department is proposing to take advantage of the opportunity presented with the publication of this rule to effect technical corrections to regulatory references appearing in Part 275 of the regulations. In a number of paragraphs in Part 275 other paragraphs or sections of the regulations are cited as a reference for the reader. Over the years many of these references have become inaccurate due to revisions and renumbering of various sections of the regulations. The Department is taking this opportunity to correct references appearing in the following paragraphs: 275.3(c), 275.11(g), 275.23(d)(1)(iii), 275.23(e)(1), 275.23(e)(7)(i)(D), 275.23(e)(7)(ii), 275.23(e)(7)(iii)(A), 275.23(e)(7)(iii)(B), and 275.23(e)(10)(iii).

Dates

Section 13971 of the Leland Act sets implementation dates for the various provisions of the law addressed in this proposed rule. The provisions of section 13951 that amended sections 13(a)(1), 14(a), and 16(c) of the Act are effective on October 1, 1991, with the exception of the provision regarding exclusion of variances resulting from the application of new regulations. The provision regarding the exclusion of variances resulting from the application of new regulations is effective on October 1, 1992.

List of Subjects

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Records, Reporting, and recordkeeping requirements, Social Security, Students.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting, and recordkeeping requirements.

For the reasons set out in the preamble, Parts 273 and 275 of Chapter II of Title 7 *Code of Federal Regulations* are proposed to be amended as follows:

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

1. The authority citation for Part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

§ 273.2 [Amended]

2. In § 273.2:

a. the third sentence of paragraph (d)(2) is amended by removing the words ''after 95 days'' and adding the words ''after 90 days'' in their place;

b. the first sentence of paragraph (f)(1)(ix) is amended by removing the words ''after 95 days'' and adding the words ''after 90 days'' in their place.

PART 275—PERFORMANCE REPORTING SYSTEM

3. The authority citation for Part 275 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

4. In § 275.3:

a. the last sentence of the introductory text of paragraph (c) is amended by removing the reference to ''275.23(e)(6)'' and adding in its place a reference to ''275.23(e)(8)'';

b. paragraph (c)(1)(iii) is revised;

c. paragraph (c)(4) is revised.

The revisions read as follows:

§ 275.3 Federal monitoring.

* * * * *

(c) *Validation of State Agency Error Rates.* * * *

(1) *Payment error rate.* * * *

(iii) Upon the request of a State agency, the appropriate FCS Regional Office will assist the State agency in

completing active cases reported as not completed due to household refusal to cooperate.

* * * * *

(4) *Arbitration*. (i) Whenever the State agency disagrees with the FCS regional office concerning individual QC case findings and the appropriateness of actions taken to dispose of an individual case, the State agency may request that the dispute be arbitrated on a case-by-case basis by an FCS Arbitrator, subject to the following limitations.

(A) The State agency may only request arbitration when the State agency's and FCS regional office's findings or disposition of an individual QC case disagree.

(B) The arbitration review shall be limited to the point(s) within the Federal findings or disposition that the State agency disputes. However, if the arbitrator in the course of the review discovers a mathematical error in the computational sheet, the arbitration shall correct the error while calculating the allotment.

(C) The State agency shall only be eligible to request arbitration of the Federal findings or disposition of an individual case if that case was disposed of and the findings reported in accordance with the timeframes specified in § 275.21(b)(2). An exception shall be made for cases which fail to meet the timeframes specified in § 275.21(b)(2) if the cases were originally disposed of by the State agency, in a timely manner, as incomplete due to refusal-to-cooperate on the part of the household. If the household later agrees to cooperate with the Quality Control reviewer, and the case is retransmitted into IQCS as completed, then the secondary disposition/findings shall not be subject to the timeliness of disposition restriction.

(ii) The FCS Arbitrator(s) shall be an individual or individuals who are not directly involved in the validation effort.

(iii) The State agency shall submit a request for arbitration, to be received by the appropriate FCS regional office within 10 calendar days of the date of receipt by the State agency of the regional office case findings. In the event the last day of this time period falls on a Saturday, Sunday, or Federal or State holiday, the period shall run to the end of the next work day.

(iv) When the State agency requests arbitration, it shall submit all required documentation to the appropriate FCS regional office addressed to the attention of the FCS Arbitrator. The FCS regional office QC staff may submit a response to the State agency's request to the FCS Arbitrator.

(A) A complete request is one that contains all of the information that FCS requires. The following items shall be required:

(*1*) The request for arbitration and basic case information, which would include State, sample month and year, review number, review date, reporting and budgeting procedure, food stamp procedures for budgeting grants from the Aid to Families with Dependent Children Program, certification period, and calendar or fiscal month system.

(*2*) Information about the certification action under dispute, which would include initial certification or recertification, legible certification work papers, legible State agency quality control work papers, and legible regional office quality control work papers.

(*3*) Information about the State agency's specific issues, which would include the element under dispute, regulatory citations, handbook citations, policy memoranda, legislative implementation dates, applicable waivers, and verification of facts.

(B) If the State agency's request is not complete the arbitrator shall make a decision based solely on the available documents.

(v) The FCS Arbitrator shall have 35 calendar days from the date of receipt of a State agency's request for arbitration to review the case and make a decision.

* * * * *

§ 275.11 [Amended]

5. In § 275.11:

a. the third sentence of paragraph (g) is amended by removing the reference to ''275.25(e)(6)'' and adding in its place a reference to ''275.23(e)(8)'';

b. the fourth sentence of paragraph (g) is amended by removing the reference to ''275.25(c)'' and adding in its place a reference to ''275.23(c)''.

6. In § 275.12:

a. the introductory text of paragraph (d)(2)(vii) is revised;

b. paragraph (d)(2)(vii)(A) is revised;

c. paragraph (d)(2)(vii)(D) is revised.

The revisions read as follows:

§ 275.12 Review of active cases.

* * * * *

(d) *Variance identification.* * * *

(2) *Variances excluded from error analysis.* * * *

(vii) Subject to the limitations provided in paragraphs (d)(2)(vii)(A) through (d)(2)(vii)(F) of this section any variance resulting from application of a new Program regulation or implementing memorandum (if one is sent to advise State agencies of a change in Federal law, in lieu of regulations) during the first 120 days from the required implementation date.

(A) When a regulation allows a State agency an option to implement prior to the required implementation date, the date on which the State agency chooses to implement may, at the option of the State, be considered to be the required implementation date for purposes of this provision. The exclusion period would be adjusted to begin with this date and end on the 120th day that follows. States choosing to implement prior to the required implementation date must notify the appropriate FCS Regional Office, in writing, prior to implementation that they wish the 120 day variance exclusion to commence with actual implementation. Absent such notification, the exclusionary period will commence with the required implementation date.

* * * * *

(D) Regardless of when the State agency actually implemented the regulation, the variance exclusion period shall end on the 120th day following the required implementation date, including the required implementation date defined in paragraph (d)(2)(vii)(A) of this section.

* * * * *

7. In § 275.21:

a. paragraph (b)(2) is revised;

b. the first sentence of paragraph (b)(4) is amended by removing the words ''pending 95 days'' and adding the words ''pending 90 days'' in their place.

The revision reads as follows:

§ 275.21 Quality control review reports.

* * * * *

(b) *Individual cases.* * * *

(2) The State agency shall dispose of and report the findings of 90 percent of all cases selected in a given sample month so that they are received by FCS within 75 days of the end of the sample month. All cases selected in a sample month shall be disposed of and the findings reported so that they are received by FCS within 90 days of the end of the sample month. Without FCS approval, no active case shall be reported as not completed solely because the State agency was unable to process the case review in time for it to be reported in accordance with these timeframes.

* * * * *

8. In § 275.23:

a. the last sentence of paragraph (d)(1)(iii) is amended by removing the reference to ''(e)(6)(iii)'' and adding in its place a reference to ''(e)(8)(iii)'';

b. paragraph (e)(1) is amended by removing the reference to ''paragraph

(e)(6)'' and adding in its place a reference to ''paragraph (e)(8)'';

c. the heading of paragraph (e)(4) is amended by removing the words ''*Fiscal Year 1986 and Beyond*'' and adding the words ''*Fiscal Years 1986 through Fiscal Year 1991*'' in their place;

d. the first sentence of paragraph (e)(4)(i) is amended by removing the words ''For Fiscal Year 1986 and subsequent years'' and adding the words ''For Fiscal Year 1986 through Fiscal Year 1991'' in their place;

e. paragraphs (e)(5), (e)(6), (e)(7), (e)(8), (e)(9), and (e)(10) are redesignated as paragraphs (e)(6), (e)(7), (e)(8), (e)(9), (e)(10), and (e)(11), respectively, and a new paragraph (e)(5) is added;

f. the newly redesignated paragraph (e)(7) is revised;

g. the first sentence of newly redesignated paragraph (e)(8)(i)(D) is amended by removing the reference to ''paragraph (e)(7)(iii)'' and adding in its place a reference to ''paragraph (e)(8)(iii)'';

h. the last sentence of newly redesignated paragraph (e)(8)(ii) is amended by removing the words ''procedure of § 276.7'' and adding the words ''procedures of Part 283'' in their place;

i. the first sentence of newly redesignated paragraph (e)(8)(iii)(A) is amended by removing the reference to ''paragraph (e)(7)(i)(C)'' and adding in its place a reference to ''paragraph (e)(8)(i)(C)'';

j. the first sentence of newly redesignated paragraph (e)(8)(iii)(B) is amended by removing the reference to ''paragraph (e)(7)(i)(C)'' and adding in its place a reference to ''paragraph (e)(8)(i)(C)'';

k. the first three sentences in newly redesignated paragraph (e)(9) are revised;

l. in newly redesignated paragraph (e)(10)(i) the first sentence is amended by removing the reference to ''275.23(e)(4)'' and adding in its place a reference to ''275.23(e)(5)''. The second sentence is amended by removing the reference to ''276.7'' and adding in its place a reference to ''Part 283''. The fourth sentence is amended by removing the words ''2 years'' and adding the words ''one year'' in their place.

m. the last sentence of newly redesignated paragraph (e)(11)(iii) is amended by removing the reference to ''(e)(10)(vi)'' and adding in its place a reference to ''(e)(11)(vi)''.

The revisions and additions read as follows:

§ 275.23 Determination of State agency program performance.

* * * * *

(e) *State agencies' liabilities for payment error rates.* * * *

(5) *State agencies' liabilities for payment error—Fiscal Year 1992 and beyond.* Each State agency that fails to achieve its payment error rate goal during a fiscal year shall be liable as specified in the following paragraphs.

(i) For Fiscal Year 1992 and subsequent years, FCS shall announce a national performance measure within 30 days following the completion of the case review and the arbitration processes for the fiscal year. The national performance measure is the sum of the products of each State agency's payment error rates times that State agency's proportion of the total value of national allotments issued for the fiscal year using the most recent issuance data available at the time the State agency is notified of its payment error rate. Once announced, the national performance measure for a given fiscal year will not be subject to change.

(ii) For any fiscal year in which a State agency's payment error rate exceeds the national performance measure for the fiscal year, the State agency shall pay or have its share of administrative funding reduced by an amount equal to the product of:

(A) the value of all allotments issued by the State agency in the fiscal year; multiplied by

(B) the lesser of—

(*1*) the ratio of the amount by which the payment error rate of the State agency for the fiscal year exceeds the national performance measure for the fiscal year, to the national performance measure for the fiscal year, or

(*2*) one; multiplied by

(C) the amount by which the payment error rate of the State agency for the fiscal year exceeds the national performance measure for the fiscal year.

* * * * *

(7) *Good cause—(i) Events.* When a State agency with otherwise effective administration exceeds the tolerance level for payment errors as described in this section, the State agency may seek relief from liability claims that would otherwise be levied under this section on the basis that the State agency had good cause for not achieving the payment error rate tolerance. State agencies desiring such relief must file an appeal with the Department's Administrative Law Judge (ALJ) in accordance with the procedures established under Part 283 of this chapter. The 5 unusual events described below are considered to have a potential for disrupting program operations and increasing error rates to an extent that relief from a resulting liability or increased liability is appropriate. The occurrence of an event(s) does not automatically result in a determination of good cause for an error rate in excess of the national performance measure. The State agency must demonstrate that the event had an adverse and uncontrollable impact on program operations during the relevant period, and the event caused an uncontrollable increase in the error rate. Good cause relief will only be considered for that portion of the error rate/liability attributal to the unusual event. The following are unusual events which State agencies may use as a basis for requesting good cause relief and specific information that must be submitted to justify such requests for relief:

(A) Natural disasters such as those under the authority of the Stafford Act of 1988 (Pub. L. 100–707), which amended the Disaster Relief Act of 1974 (Pub. L. 93–288) or civil disorders that adversely affect program operations.

(*1*) When submitting a request for good cause relief based on this example, the State agency shall provide the following information:

(*i*) The nature of the disaster(s) (e.g. a tornado, hurricane, earthquake, flood, etc.) or civil disorder(s)) and evidence that the President has declared a disaster;

(*ii*) The date(s) of the occurrence;

(*iii*) The date(s) after the occurrence when program operations were affected;

(*iv*) The geographic extent of the occurrence (i.e. the county or counties where the disaster occurred);

(*v*) The proportion of the food stamp caseload whose management was affected;

(*vi*) The reason(s) why the State agency was unable to control the effects of the disaster on program administration and errors;

(*vii*) The Identification and explanation of the uncontrollable nature of errors caused by the event (types of errors, geographic location of the errors, time period during which the errors occurred, etc.).

(*viii*) The percentage of the payment error rate that resulted from the occurrence and how this figure was derived; and

(*ix*) The degree to which the payment error rate exceeded the national performance measure in the subject fiscal year.

(*2*) The following criteria and methodology will be used to assess, evaluate and respond to claims by the State agency for a good cause waiver of liability in conjunction with the appeals process, and to determine that portion of the error rate/liability attributable to the uncontrollable effects of a disaster or

civil disorder: Geographical impact of the disaster; State efforts to control impact on program operations; the proportion of food stamp caseload affected; and/or the duration of the disaster and its impact on program operations. Adjustments for these factors may result in a waiver of all, part, or none of the error rate liabilities for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeds the national performance measure. For example, a reduction in the amount may be made when a State agency's recent error rate history indicates that even absent the events described, the State agency would have exceeded the national performance measure in the review period. If a State agency has provided insufficient information to determine a waiver amount for the uncontrollable effects of a natural disaster or civil disorder using factual analysis, the waiver amount shall be evaluated using the following formula and methodology which measures both the duration and intensity of the event: Duration will be measured by the number of months the event had an adverse impact on program operations. Intensity will be a proportional measurement of the issuances for the counties affected to the State's total issuance. This ratio will be determined using issuance figures for the first full month immediately preceding the disaster. This figure will not include issuances made to households participating under disaster certification authorized by FCS for a natural disaster and already excluded from the error rate calculations under § 275.12(g)(2)(vi). ''Counties affected'' will include counties where the disaster/civil disorder occurred, and any other county that the State agency can demonstrate had program operations adversely impacted due to the event (such as a county that diverted significant numbers of food stamp certification or administrative staff). The amount of the waiver of liability will be determined using the following linear equation: $Ia/Ib \times [M/12 \text{ or } Mp/18] \times L$ where: Ia is the issuance for the first full month immediately preceding the unusual event for the county affected; Ib is the State's total issuance for the first full month immediately preceding the unusual event; M/12 is number of months in the subject fiscal year that the unusual event had an adverse impact on program operations; Mp/18 is the number of months in the last half (April through September) of the prior fiscal year that the unusual event had an adverse impact on program operations; L is the total amount of the liability for the fiscal year. Mathematically this formula could result in a waiver of more than 100% of the liability, however, no more than 100% of a State's liability will be waived for any one fiscal year. Under this approach, unless the State agency can demonstrate a direct uncontrollable impact on the error rate, the effects of disasters or civil disorders that ended prior to the second half of the prior fiscal year will not be considered.

(B) Strikes by state agency staff necessary to determine Food Stamp Program eligibility and process case changes.

(*1*) When submitting a request for good cause relief based on this example, the State agency shall provide the following information:

(*i*) Which workers (i.e. eligibility workers, clerks, data input staff, etc.) and how many (number and percentage of total staff) were on strike or refused to cross picket lines;

(*ii*) The date(s) and nature of the strike (i.e. the issues surrounding the strike);

(*iii*) The date(s) after the occurrence when program operations were affected;

(*iv*) The geographic extent of the strike (i.e. the county or counties where the strike occurred);

(*v*) The proportion of the food stamp caseload whose management was affected;

(*vi*) The reason(s) why the State agency was unable to control the effects of the strike on program administration and errors;

(*vii*) Identification and explanation of the uncontrollable nature of errors caused by the event (types of errors, geographic location of the errors, time period during which the errors occurred, etc.);

(*viii*) The percentage of the payment error rate that resulted from the strike and how this figure was derived; and

(*ix*) The degree to which the payment error rate exceeded the national performance measure in the subject fiscal year.

(*2*) The following criteria shall be used to assess, evaluate and respond to claims by the State agency for a good cause waiver of liability in conjunction with the appeals process, and to determine that portion of the error rate/liability attributable to the uncontrollable effects of the strike: Geographical impact of the strike; State efforts to control impact on program operations; the proportion of food stamp caseload affected; and/or the duration of the strike and its impact on program operations. Adjustments for these factors may result in a waiver of all, part, or none of the error rate liabilities for the applicable period. For example, the amount of the waiver might be reduced for a strike that was limited to a small area of the State. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeded the national performance measure. If a State agency has provided insufficient information to determine a waiver amount for the uncontrollable effects of a strike using factual analysis, a waiver amount shall be evaluated by using the formula described in paragraph (e)(7)(i)(A) of this section. Under this approach, unless the State agency can demonstrate a direct uncontrollable impact on the error rate, the effects of strikes that ended prior to the second half of the prior fiscal year will not be considered.

(C) A significant growth in food stamp caseload in a State prior to or during a fiscal year, such as a 15 percent growth in caseload. Caseload growth which historically increases during certain periods of the year will not be considered unusual or beyond the State agency's control.

(*1*) When submitting a request for good cause relief based on this example, the State agency shall provide the following information:

(*i*) The amount of growth (both actual and percentage);

(*ii*) The time the growth occurred (what month(s)/year);

(*iii*) The date(s) after the occurrence when program operations were affected;

(*iv*) The geographic extent of the caseload growth (i.e. Statewide or in which particular counties);

(*v*) The impact of caseload growth;

(*vi*) The reason(s) why the State agency was unable to control the effects of caseload growth on program administration and errors;

(*vii*) The percentage of the payment error rate that resulted from the caseload growth and how this figure was derived; and

(*viii*) The degree to which the error rate exceeded the national performance measure in the subject fiscal year.

(*2*) The following criteria and methodology shall be used to assess, evaluate and respond to claims by the State agency for a good cause waiver of liability in conjunction with the appeals process, and to determine that portion of the error rate/liability attributable to the uncontrollable effects of unusual caseload growth: Geographical impact of the caseload growth; State efforts to control impact on program operations; the proportion of food stamp caseload

affected; and/or the duration of the caseload growth and its impact on program operations. Adjustments for these factors may result in a waiver of all, part, or none of the error rate liabilities for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeded the national performance measure. For example, a reduction in the amount may be made when a state agency's recent error rate history indicates that even absent the events described, the State agency would have exceeded the national performance measure in the review period. Under this approach, unless the State agency can demonstrate a direct uncontrollable impact on the error rate, the effects of caseload growth that ended prior to the second half of the prior fiscal year will not be considered. If the State agency has provided insufficient information to determine a waiver amount for the uncontrollable effects of caseload growth using factual analysis, the waiver amount shall be evaluated using the following five step calculation: first, determine the average number of households certified to participate statewide in the Food Stamp Program for the base period consisting of the twelve consecutive months ending with March of the prior fiscal year; second, determine the percentage of increase in caseload growth from the base period (step 1) using the average number of households certified to participate statewide in the Food Stamp Program for the twelve month period beginning with April of the prior fiscal year and ending with March of the current fiscal year; third, determine the percentage the error rate for the subject fiscal year as calculated under paragraph (e)(5)(i) of this section exceeds the national performance measure determined in accordance with paragraph (e)(5)(i) of this section; fourth, divide the percentage of caseload growth increase arrived at in step 2 by the percentage the error rate for the subject fiscal year exceeds the national performance measure as determined in step 3; and finally, multiply the quotient arrived at in step 4 by the liability amount for the current fiscal year to determine the amount of waiver of liability. Under this methodology, caseload growth of less than 15% and/or occurring in the last half of the subject fiscal year will not be considered. Mathematically this formula could result in a waiver of more than 100% of the liability, however, no more than 100% of a State's liability will be waived for any one fiscal year.

(D) A change in the food stamp program or other Federal or State program that has a substantial adverse impact on the management of the food stamp program of a State. Requests for relief from errors caused by the uncontrollable effects of unusual program changes other than those variances already excluded by § 275.12(d)(2)(vii) will be considered to the extent the program change is not common to all States.

(*1*) When submitting a request for good cause relief based on unusual changes in the Food Stamp or other Federal or State programs, the State agency shall provide the following information:

(*i*) The type of change(s) that occurred;

(*ii*) When the change(s) occurred;

(*iii*) The nature of the adverse effect of the changes on program operations and the State agency's efforts to mitigate these effects;

(*iv*) Reason(s) the State agency was unable to adequately handle the change(s);

(*v*) Identification and explanation of the uncontrollable errors caused by the changes (types of errors, geographic location of the errors, time period during which the errors occurred, etc.);

(*vi*) The percentage of the payment error rate that resulted from the adverse impact of the change(s) and how this figure was derived; and

(*vii*) The degree to which the payment error rate exceeded the national performance measure in the subject fiscal year.

(*2*) The following criteria will be used to assess, evaluate and respond to claims by the State agency for a good cause waiver of liability in conjunction with the appeals process, and to determine that portion of the error rate/liability attributable to the uncontrollable effects of unusual changes in the Food Stamp Program or other Federal and State programs: Geographical impact of the unusual changes in the Food Stamp Program or other Federal and State programs; State efforts to control impact on program operations; the proportion of food stamp caseload affected; and/or the duration of the unusual changes in the Food Stamp Program or other Federal and State programs and the impact on program operations. Adjustments for these factors may result in a waiver of all, part, or none of the error rate liabilities for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeded the national performance measure.

(E) A significant circumstance beyond the control of the State agency. Requests for relief from errors caused by the uncontrollable effect of the significant circumstance other than those specifically set forth in this paragraph will be considered to the extent that the circumstance is not common to all States, such as a fire in a certification office.

(*1*) When submitting a request for good cause relief based on significant circumstances, the State agency shall provide the following information:

(*i*) The significant circumstances that the State agency believes uncontrollably and adversely affected the payment error rate for the fiscal year in question;

(*ii*) Why the State agency had no control over the significant circumstances;

(*iii*) How the significant circumstances had an uncontrollable and adverse impact on the State agency's error rate;

(*iv*) Where the significant circumstances existed (i.e. Statewide or in particular counties);

(*v*) When the significant circumstances existed (provide specific dates whenever possible);

(*vi*) The proportion of the food stamp caseload whose management was affected;

(*vii*) Identification and explanation of the uncontrollable errors caused by the event (types of errors, geographic location of the errors, time period during which the errors occurred, etc.);

(*viii*) The percentage of the payment error rate that was caused by the significant circumstances and how this figure was derived; and

(*ix*) The degree to which the payment error rate exceeded the national performance measure in the subject fiscal year.

(*2*) The following criteria shall be used to assess, evaluate and respond to claims by the State agency for a good cause waiver of liability in conjunction with the appeals process, and to determine that portion of the error rate/liability attributable to the uncontrollable effects of a significant circumstance beyond the control of the State agency, other than those set forth in paragraph (e)(7)(i)(E) of this section: Geographical impact of the significant circumstances; State efforts to control impact on program operations; the proportion of food stamp caseload affected; and/or the duration of the significant circumstances and the impact on program operations. Adjustments for these factors may result

in a waiver of all, part, or none of the error rate liabilities for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeded the national performance measure.

(ii) *Adjustments.* When good cause is found under the criteria in paragraphs (e)(7)(i)(A) through (e)(7)(i)(E) of this section, the waiver amount may be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeds the national performance measure.

(iii) *Evidence.* When submitting a request to the ALJ for good cause relief, the State agency shall include such data and documentation as is necessary to support and verify the information submitted in accordance with the requirements of paragraph (e)(7) of this section so as to fully explain how a particular significant circumstance(s) uncontrollably affected its payment error rate.

(iv) *Finality.* The initial decision of the ALJ concerning good cause shall constitute the final determination for purposes of judicial review without further proceedings as established under the provisions of § 283.17 and § 283.20 of this chapter.

* * * * *

(9) *FCS Timeframes.* FCS shall determine, and announce the national average payment error rate for a fiscal year within 30 days following the completion of the case review process and all arbitrations of State agency-FCS difference cases for that fiscal year, and at the same time FCS shall notify all State agencies of their individual payment error rates and payment error rate liabilities, if any. The case review process and the arbitration of all difference cases shall be completed not later than 180 days after the end of fiscal year. FCS shall initiate collection action on each claim for such liabilities before the end of the fiscal year following the end of the fiscal year reporting period in which the claim arose unless an administrative appeal relating to the claim is pending. * * *

* * * * *

Dated: June 16, 1995.

Ellen Haas,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 95–15460 Filed 6–22–95; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; Energy Efficiency Standards for Television Sets

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Department of Energy (Department) today withdraws a proposed rule to establish energy efficiency standards for television sets. Promulgation of such a rule is discretionary under the terms of the authorizing legislation for the program. This action is based on: a decision to focus the Department's limited resources on standards-related rulemakings that are mandatory under the authorizing legislation; and acceptance of arguments reflected in the comments that the uncertainty created by the rulemaking and any resulting standards could adversely affect the development of innovative television technologies critical to the Nation's future economy and international competitive position.

FOR FURTHER INFORMATION CONTACT:

Ingrid Watson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–431, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8119

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION:

1. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, created the Energy Conservation Program for Consumer Products other than automobiles. In 1978, the National Energy Conservation Policy Act (NECPA), Pub. L. 95–619, amended EPCA and required DOE to establish mandatory energy efficiency standards for each of the 13 listed ''covered products,'' including television sets. In 1987, the National Appliance Energy Conservation Act (NAECA), Pub. L. 100–12, amended EPCA, by refining the list of appliances defined as ''covered products'' and establishing federal energy conservation standards for 11 of the 12 ''covered products'' on the revised list. Television sets have a unique status under EPCA—televisions are listed as ''covered products,'' but are the only covered product for which the statute does not require a standard. Moreover, televisions have a unique status under EPCA with regard to rulemakings. EPCA requires the Department to undertake rulemakings with regard to the other covered products according to a prescribed schedule. By contrast, with regard to televisions, EPCA provides the Secretary with discretion to establish an energy conservation standard for television sets by rule, but does not require such a rulemaking. 42 U.S.C. 6295(l)(3).

2. Background

On March 4, 1994, the Department published a notice of proposed rulemaking regarding energy conservation standards for eight products. (59 FR 10464.) The rulemaking is mandatory for seven of these products. The eighth product was television sets. The Department invited interested members of the public to submit written comments and to participate at a public hearing. The public comment period closed on July 18, 1994. During the comment period, over 35 comments were received on the proposed rule regarding energy conservation standards on television sets from manufacturers, consumers, members of Congress, retailers, national energy advocates and environmental groups. The Department has reviewed and evaluated the comments. On January 31, 1995, the Department published a **Federal Register** notice describing the Department's plans for pursuing these rulemakings. (60 FR 5880.) That notice acknowledged the need for further data collection prior to deciding how to proceed with the proposed standards for televisions. Such data collection would involve original development of test data that is otherwise unavailable.

Since the January notice, there have been a variety of developments. First, the appropriations requested for this program and preliminary Congressional actions on this request suggest that resources to carry out this program are likely to be limited and are unlikely to be sufficient to support all of the possible analyses related to TVs and other products covered by the authorizing legislation. Second, the Department has been urged to give priority to rulemakings affecting other products by manufacturers of those

other products and other interested persons. Some of these rulemakings may result in very large additional energy savings and economic benefits.

Third, Department officials met with representatives of the Electronics Industry Association (EIA) to discuss options for the proposed standards on televisions. EIA reiterated comments made in its written submissions, and urged DOE to terminate the rulemaking with regard to televisions. EIA's arguments stressed that: the energy usage of an individual television is relatively small; standards could adversely affect the utility of the product; the large number of options make it difficult to design an efficiency standard; the proposed standard might have anti-competitive effects; and standards could interfere with the development of the information superhighway.

Fourth, DOE officials met with a representative of the American Council for an Energy Efficient Economy (ACEEE) concerning the proposed television standards. ACEEE acknowledged that further data collection may be needed before pursuing the rulemaking, but advised DOE to continue with efforts to collect the necessary information. ACEEE also indicated that televisions need not be a top priority of the appliance program. However, they urged DOE to hold the rulemaking in abeyance pending collection of further data rather than affirmatively terminating the rulemaking.

3. Discussion

DOE acknowledges that, as some of the comments argued, its engineering analysis in support of the proposed television standards did not consider the energy use of the large number of special features now available on many televisions. Remedying that defect would require DOE to engage in expensive and time consuming testing of television sets, and it is impossible to know whether the results of such testing would support the establishment of Federal energy efficiency standards. Additionally some of those special features would require modifications to the DOE test procedure in order to adequately measure the impact of the features on energy consumption. If DOE were to undertake such testing and possible test procedure modifications, it would expend limited resources on a project with less potential benefits than currently mandated EPCA rulemakings. Moreover, devotion of additional resources to setting television standards would make it very difficult to respond to the requests of companies in other industries that are subject to mandatory standards and that are pressing the Department to assign higher priority to completion of updated test procedure and standards rulemakings that they view as beneficial. In view of the limited funds likely to be available for implementing this program, the Department has decided that priority must be assigned to completion of mandatory rulemakings and not to this discretionary rulemaking.

Several comments claim that there is a significant risk that the prospect of standards could adversely affect ongoing fundamental changes in television technology and markets. These technology changes could have significant implications for the energy use of televisions, as well as for the range of communication, data processing, and other services provided by the televisions of the future and their associated electronic equipment. Some of the possible developments in television technology that could significantly affect their energy use include: high definition television, emergency broadcast features, virtual reality entertainment, built-in video cassette recorders, on screen program guides, and interactive information and communication features necessary for access to the National Information Infrastructure (the so-called ''information superhighway''). These changes in technology distinguish televisions from other covered products that, for the most part, are based on well-established, relatively stable technologies. The Department recognizes that technology and product developments continuing throughout the 1990's and into the next decade will be critical to the future success of the U.S. television industry. The Department further also recognizes that the development of Federal energy efficiency standards for televisions could adversely affect the willingness of private industry to invest in new technologies or products that might otherwise produce substantial economic benefits. The Department believes this risk, although not precisely quantifiable, could be significant.

Accordingly, in order to focus its resources on mandatory rulemakings and to avoid the risk of undue interference in the development of new technology and products critical to the Nation's future economic health and international competitive position, the Department today gives notice of the withdrawal of its proposed energy efficiency standards for televisions.

Issued in Washington, DC, June 20, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95–15474 Filed 6–22–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–CE–21–AD]

Airworthiness Directives; Fairchild Aircraft SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise AD 94–07–10, which currently requires the following on Fairchild Aircraft SA226 and SA227 series airplanes: repetitively inspecting (visually) the wing skin for cracks; dye penetrant inspecting the spar straps if the wing skin is found cracked; and, if any crack is found in the spar straps, repairing the spar straps and modifying the wing skin. That AD references an incorrect dye penetrant inspection when the wing skin is found cracked. This action would maintain the requirements of AD 94–07–10, but would incorporate the correct dye penetrant inspection for when the wing skin is found cracked. The actions specified by the proposed AD are intended to prevent failure of the wing skin at the top aft outboard corner of the battery box, which could result in structural damage to the wing.

DATES: Comments must be received on or before August 25, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–21–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; telephone (512) 824–9421. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Hung Viet Nguyen, Aerospace Engineer, FAA, Airplane Certification Office, 2601

Meacham Boulevard, Fort Worth, Texas 76137–0150; telephone (817) 222–5155; facsimile (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 93–CE–21–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–21–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 94–07–10, Amendment 39–8868 (59 FR 15329; April 1, 1994), currently requires the following on certain Fairchild Aircraft SA226 and SA227 series airplanes: repetitively inspecting (visually) the wing skin for cracks; dye penetrant inspecting the spar straps if the wing skin is found cracked; and, if any crack is found in the spar straps, repairing the spar straps and modifying the wing skin. That AD also provides the option of modifying the wing skin as terminating action for the repetitive inspections. Accomplishment of the required actions would be in accordance with the following service bulletins (SB), as applicable:

- Fairchild Service Bulletin (SB) 226–57–018, Issued: January 28, 1993, Revised: June 3, 1993 (pages 4 through 11 and 13 through 15), Revised: July 1, 1993 (page 12) and Revised: October 25, 1993 (pages 1 through 3);
- Fairchild SB 227–57–005, Issued: December 21, 1992, Revised: June 3, 1993 (pages 2 through 11 and 13 through 15), and Revised: July 1, 1993 (pages 1 and 12); or
- Fairchild Aircraft SB CC7–57–002, Issued: January 28, 1993, Revised: June 3, 1993 (pages 2 through 11 and 13 through 15), and Revised: July 1, 1993 (pages 1 and 12).

Since issuing that AD, the FAA has received reports that AD 94–07–10 references an incorrect dye penetrant inspection in the applicable service information. The FAA has determined that reference to this dye penetrant inspection should be corrected and incorporated into the AD.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent failure of the wing skin at the top aft outboard corner of the battery box, which could result in structural damage to the wing.

Since an unsafe condition has been identified that is likely to exist or develop in other Fairchild Aircraft SA226 and SA227 series airplanes of the same type design, the proposed AD would revise AD 94–07–10 to require the same repetitive visual inspections, but require the dye penetrant inspection in accordance with the correct portion of the ACCOMPLISHMENT INSTRUCTIONS section of the above-referenced service bulletins, as applicable.

The FAA estimates that 776 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed visual inspection of the upper wing skin on both wings, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $46,560. This figure does not include the cost of any dye penetrant inspections of the spar strap that would be required if the wing skin is found cracked, nor does it include the cost of the wing skin modification or the repetitive inspections. The optional modification would terminate the need for the repetitive inspection requirement. The figure above is based upon the assumption that no affected airplane owner/operator has accomplished this inspection-terminating modification.

In addition, the proposed actions impose the same cost impact upon U.S. operators as is already required by AD 94–07–10.

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

For the reasons discussed above, I certify that this action (1) is not a ''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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13, is amended by removing AD 94–07–10, Amendment 39–8868 (59 FR 15329; April 1, 1994), and adding a new AD to read as follows:

Fairchild Aircraft: Docket No. 93–CE–21–AD; Revises AD 94–07–10, Amendment 39–8868.

Applicability: The following model and serial number airplanes, certificated in any category:

Model	Serial Nos.
SA226–T	T201 through T275, and T277 through T291.
SA226–T(B) ..	T(B)276, and T(B)292 through T(B)417.
SA226–AT	AT001 through AT074.
SA226–TC	TC201 through TC419.
SA227–TT	TT421 through TT541.
SA227–AT	AT423 through AT631, and AT695.
SA227–AC	AC406, AC415, AC416, and AC420 through AC789.
SA227–BC	BC420 through BC789.
SA227–CC ...	CC784, and CC790 through CC822.
SA227–DC ...	DC784, and DC790 through DC822.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required initially upon the accumulation of 2,500 hours time-in-service (TIS) or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished (compliance with AD 94–07–10), and thereafter as indicated in the body of the AD.

To prevent failure of the wing skin at the top aft outboard corner of the battery box, which could result in structural damage to the wing, accomplish the following:

Note 2: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.

Level 2 and Level 3 structures are designations of the Level 1 paragraph they immediately follow.

(a) Visually inspect the right and left upper wing skin by the top aft outboard corner of the battery box for cracks in accordance with Figure 1 and the ACCOMPLISHMENT INSTRUCTIONS, A. Inspection, section of whichever of the following is applicable:

(1) Fairchild Service Bulletin (SB) 226–57–018, Issued: January 28, 1993, Revised: June 3, 1993 (pages 4 through 11 and 13 through 15), Revised: July 1, 1993 (page 12) and Revised: October 25, 1993 (pages 1 through 3);

(2) Fairchild SB 227–57–005, Issued: December 21, 1992, Revised: June 3, 1993 (pages 2 through 11 and 13 through 15), and Revised: July 1, 1993 (pages 1 and 12); or

(3) Fairchild Aircraft SB CC7–57–002, Issued: January 28, 1993, Revised: June 3, 1993 (pages 2 through 11 and 13 through 15), and Revised: July 1, 1993 (pages 1 and 12).

(b) If cracks are not found during the visual inspection required by paragraph (a) of this AD, within 500 hours TIS after this initial visual inspection, accomplish one of the following:

(1) Reinspect the right and left upper wing skin by the top aft outboard corner of the battery box for cracks in accordance with Figure 1 and the ACCOMPLISHMENT INSTRUCTIONS, A. Inspection, section of the applicable service information presented in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, and reinspect thereafter at intervals not to exceed 500 hours TIS; or

(2) Modify the upper wing skin in accordance with the ACCOMPLISHMENT INSTRUCTIONS, B. Removal and C. Installation, section of the service information referenced in paragraphs (a)(1), (a)(2), or (a)(3) of this AD, as applicable. Accomplishing this modification terminates the repetitive visual inspections that are specified in paragraph (b)(1) of this AD, and the modification may be accomplished at any time to eliminate this repetitive inspection requirement.

(c) If cracks are found during the inspection required by paragraph (a) of this AD, prior to further flight, dye penetrant inspect the 27–31130 straps in the wheel wells as specified in the ACCOMPLISHMENT INSTRUCTIONS, A. Inspection section, paragraph (1)(b), of the service information referenced in paragraphs (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) If cracks are found in either of the 27–31130 straps during the inspection required by paragraph (c) of this AD, prior to further flight, accomplish the following:

(i) Repair the 27–31130 strap in accordance with a scheme obtained from the manufacturer through the Fort Worth Airplane Certification Office (ACO) at the address specified in paragraph (e) of this AD; and

(ii) Modify the upper wing skin in accordance with the ACCOMPLISHMENT INSTRUCTIONS, B. Removal and C. Installation, section of the service information referenced in paragraphs (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(2) If no cracks are found in either of the 27–31130 straps, within 150 hours TIS after the initial dye penetrant inspection required by paragraph (c) of this AD, accomplish one of the following:

(i) Reinspect (dye penetrant) the 27–31130 straps in the wheel well for cracks as specified in the ACCOMPLISHMENT INSTRUCTIONS, A. Inspection section, paragraph (1)(b), of the service information referenced in paragraphs (a)(1), (a)(2), or (a)(3) of this AD, as applicable, and if no cracks are found, continue to reinspect at intervals not to exceed 150 hours TIS; or

(ii) Modify the upper wing skin in accordance with the ACCOMPLISHMENT INSTRUCTIONS, B. Removal and C. Installation, section of the service information referenced in paragraphs (a)(1), (a)(2), or (a)(3) of this AD, as applicable. Accomplishing this modification terminates the repetitive dye penetrant inspections that are specified in paragraph (c)(2)(i) of this AD, and the modification may be accomplished at any time to eliminate this repetitive inspection requirement.

Note 3: Certain Limited Approved Repair (LAR) and Approved Repair Procedure (ARP) documents issued by Fairchild Aircraft specify procedures for accomplishing the same modification referenced in paragraphs (b)(2), (c)(1)(ii), and (c)(2)(ii). Check with the Fort Worth ACO at the address presented in paragraph (e) of this AD to find out which LAR's and ARP's are considered ''unless already accomplished'' as they relate to this AD.

(d) 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.

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Fort Worth ACO, FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76137–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

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

(f) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment revises AD 94–07–10, Amendment 39–8868.

Issued in Kansas City, Missouri, on June 19, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–15462 Filed 6–22–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 206 and 234

[Docket No. FR–3655–P–01]

RIN 2502–AG23

Mortgage Insurance on Condominium Units in Non-FHA Approved Projects

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner (HUD).

ACTION: Proposed rule.

SUMMARY: This rule would add provisions to the regulations governing Federal Housing Administration (FHA) mortgage insurance on condominium units to permit insurance of mortgages on individual units in condominium projects that have not received FHA approval in advance under existing regulatory requirements. These ''spot loans'' would be approved under less stringent requirements than the existing requirements for mortgage insurance for condominiums, but the revised rule would require satisfaction of standards that would assure FHA adequate protection of the reduced risk involved of mortgage insurance on only a few loans in any particular project.

DATES: Comments due date: August 22, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Faxed comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Richard Manuel, Acting Director, Single Family Development Division, Office of Insured Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. He may be reached at (202) 708–2700 (voice) or (202) 708–4594 (TDD). These telephone numbers are not toll-free.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in § 234.26(i) of this proposed rule have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980 (42 U.S.C. 3501–3520). The estimated public reporting burden is not expected to increase significantly over the burden previously estimated, since the Department does not expect more than 2,000 loans to be insured under this new provision.

The estimated public reporting burden of these collections is stated under the Preamble heading Findings and Certifications. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden, to the Department of Housing and Urban Development, Rules Docket Clerk at the above address; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

I. Background

The impetus for this proposed rule came from forums conducted by the FHA Commissioner in the Northwest/Alaska region. Individuals have been unable to obtain FHA mortgage insurance because condominium units that were being purchased were not in projects that had received approval under existing requirements. Existing regulations and handbook provisions contain requirements that serve as obstacles to obtaining mortgage insurance for units in condominium projects that have not been approved during or after development.

For example, in order to conform with the policies expressed by FHA in Handbook 4265.1, Appendix 24, a high percentage of the unit owners must vote to approve certain changes in the common area, such as converting any part of it to units, or selling or mortgaging any part of the common areas. Such changes, while not a frequent occurrence—because they affect the common area that is an undivided part of each property—obviously impact on the interest of lenders and mortgage insurers who look to the property as security for the mortgage. When FHA's involvement in a project is sizeable, any such change to the common area must be supported by a substantial part of the membership.

For an existing project that has not been approved during development, it is often not possible to obtain the requisite majority to approve the change and amend the documents accordingly just for the benefit of a single association member wishing to apply for Section 234 mortgage insurance. FHA has determined that approval of a unit on a spot loan basis would represent a reasonable underwriting risk even where such document changes have not been made, provided that its involvement is limited.

II. Action

The Department has determined that it is possible to insure a few condominium units in a project that has not received project approval by reducing the paperwork involved in obtaining approval. To assure that this new provision would not be used as a way to avoid the greater protections afforded the Department under the existing provisions for project approval, it would be limited to approvals of no more than 10 percent of the units in a condominium project.

The intent of this proposed rule, therefore, is to facilitate sales of units in well-managed condominium projects that are in good condition. To accomplish this end, this proposed rule would add a new paragraph to the section describing eligibility of condominium projects for mortgage insurance (§ 234.26) to deal with these unit-by-unit (''spot loan'') approvals for mortgage insurance. It also would add, in the section dealing with reverse equity mortgages (§ 206.51), a cross-reference to the new provision authorizing spot loan approvals. To make clear that the requirements for assumability, such as no right of first refusal given in any governing document, would still apply, the condominium mortgage insurance provision would include a cross-reference to that section (§ 234.66).

Findings and Certifications

Impact on the Environment

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule do not have significant impact on States or their political subdivisions since the provisions of the proposed rule affect private purchasers and sellers of condominium units.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being. Therefore, the proposed rule is not subject to review under the Order. The proposed rule merely broadens the coverage of condominium units for which mortgage insurance can be obtained.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and by approving it certifies that this proposed rule will not have a significant impact on a substantial number of small entities, because it makes available additional financing options for purchasers and sellers of condominium units.

Regulatory Agenda

This proposed rule was listed as item number 1417 under the Office of Housing in the Department's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368, 23384) under Executive Order 12866 and the Regulatory Flexibility Act.

Public Reporting Burden

The Department has estimated the public reporting burden involved in the information collections contained in the proposed rule as shown below. The public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

TABULATION OF ANNUAL REPORTING BURDEN

Description of information collection	Number of respondents	Responses per respondents	Total annual responses	Hours per response	Total annual burden hours
HUD/FHA ..... Condominium ''Spot Loan'' Checklist & Warranty.	2,000	1	2,000	.1	200

Catalog

The Catalog of Federal Domestic Assistance number for the program affected by this proposed rule is 14.133.

List of Subjects

24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, parts 206 and 234 of title 24 of the Code of Federal Regulations would be amended as follows:

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

1. The authority citation would continue to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–20; 42 U.S.C. 3535(d).

2. Section 206.51 would be revised to read as follows:

§ 206.51 Eligibility of mortgages involving a dwelling unit in a condominium.

If the mortgage involves a dwelling unit in a condominium, the project in which the unit is located shall have been committed to a plan of condominium ownership by deed, or other recorded instrument, that is acceptable to the Secretary, except as provided in § 234.26(i) of this chapter.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

3. The authority citation for part 234 would continue to read as follows:

Authority: 12 U.S.C. 1715b and 1715y; 42 U.S.C. 3535(d). Section 234.520(a)(2)(ii) is also issued under 12 U.S.C. 1701(a).

4. In § 234.26, a new paragraph (i) would be added, to read as follows:

§ 234.26 Project requirements.

* * * * *

(i) Notwithstanding the requirements of paragraphs (a) through (h) of this section, a loan on a single unit in an unapproved condominium project (''spot loan'') may qualify for mortgage insurance under this part.

(1) The project must meet the following criteria:

(i) All units, common elements, and facilities—including those that are part of any master association—must have been completed, and the project cannot be subject to additional phasing or annexation. The project must provide for undivided ownership of common areas by unit owners;

(ii) Control of the owners' association must have been turned over to the unit purchasers, and the unit purchasers must have been in control for at least one year;

(iii) At least 90% of the total units in the project must have been conveyed to the unit purchasers, and at least 51% of the total units in the project must have been conveyed to purchasers who are occupying the units as their principal residences or second homes. No single entity (the same individual, investor group, partnership, or corporation) may own more than 10% of the total units in the project;

(iv) The units in the project must be owned in fee simple or be an eligible leasehold interest, as described in § 234.65, and the unit owners must have sole ownership interest in, and right to the use of, the project's facilities, common elements, and limited common elements including parking, recreational facilities, etc.;

(v) The project must be covered by hazard, flood, and liability insurance acceptable to the Commissioner;

(vi) No more than 10% of the total units in the project may be encumbered by FHA-insured mortgages. (If more than 10% of the units in the project are encumbered by FHA-insured mortgages, the condominium project must be approved under paragraphs (a) through (h) of this section); and

(vii) The assumability provisions of § 234.66 must be satisfied.

(2) Lenders must perform an underwriting analysis and certify that a project satisfies the eligibility criteria for a ''spot loan'' on a condominium project that has not been approved by FHA. Lenders may use information from the appraiser, the owners' association, the management company, the real estate broker, and the project developer, but the lender must ensure the accuracy of the information obtained from these sources.

Dated: May 22, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 95–15356 Filed 6–22–95; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 292

National Recreation Areas; Smith River National Recreational Area

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking sets forth the procedures by which the Forest Service proposes to regulate mineral operations on National Forest System lands within the Smith River National Recreation Area. Required by statute, this proposed rule would supplement existing Forest Service mineral regulations. The intended effect is to allow for mineral operations in a manner consistent with the purposes for which Congress established the Smith River National Recreation Area.

DATES: Comments must be received in writing by August 22, 1995.

ADDRESSES: Send written comments to Director, Minerals and Geology Management Staff (2800—AUD Bldg, 4 CEN), Forest Service, USDA, PO Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this proposed rule in the office of the Director, Fourth floor, Central Wing, Auditors Building, 201 Fourteenth Street SW., Washington, DC, between the hours of 8:30 am and 4:30 pm. Those wishing to inspect comments are encouraged to call (202) 205–1535 ahead of time to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Sam Hotchkiss, Minerals and Geology Management Staff, (202) 205–1535.

SUPPLEMENTARY INFORMATION: The Smith River National Recreation Area (SRNRA) was established by the Smith River National Recreation Area Act of 1990 (the Act) (16 U.S.C. 460bbb *et seq.*). The purposes of the Act are to ensure, ''* * * the preservation, protection, enhancement, and interpretation for present and future generations of the Smith River Watershed's outstanding wild and scenic rivers, ecological diversity, and recreation opportunities while providing for the wise use and sustained productivity of its natural * * *'' In order to meet the purposes of the Act, Congress directed the Forest Service to administer the SRNRA to, among other things, provide for a broad range of recreation uses and improve fishery and water quality. Congress prohibited mining subject to valid existing rights and limited extraction of common variety mineral materials within the SRNRA to situations where the material extracted is used for construction and maintenance of roads and other facilities within the SRNRA and the excluded areas.

The SRNRA consists of approximately 300,000 acres of National Forest System lands in the Six Rivers National Forest in northern California. The Act divided the SRNRA into eight distinct management areas and specified a management emphasis for each management area. One of these eight areas is the Congressionally designated Siskiyou Wilderness which the Act specifies is to be administered pursuant to the provisions of the Wilderness Act.

The Act also designated the following rivers or river segments as components of the National Wild and Scenic Rivers System: (1) The Smith River; (2) the Middle Fork of the Smith River; (3) the North Fork of the Smith River; (4) the Siskiyou Fork of the Smith River; and (5) the South Fork of the Smith River. For these wild and scenic rivers, Congress directed that they be administered in accordance with the Act and the Wild and Scenic Rivers Act. In the event of a conflict between the provisions of these two statutes, Congress specified that provisions of the more restrictive statute apply. Finally, there are four areas that lie within the boundary of the SRNRA expressly excluded from the SRNRA.

Prospecting for minerals and mining has been an important part of the history of the Smith River area since the 1850's. Mining operations within the Smith River area have historically been small-scale placer gold exploration and recovery operations within the bed and banks of the Smith River and its main tributaries. Panning, sluicing, and dredging operations occur predominantly during the summer months. In recent years, large, low-grade nickel-cobalt resources in the uplands of the Smith River watershed have attracted attention. Currently, there are approximately 5,000 mining claims covering about 30,000 acres of National Forest System lands within the SRNRA. In addition, there are outstanding mineral rights within the SRNRA. However, as of early June 1995, there are no operators conducting operations.

In section 8 of the Act, Congress addressed to what extent mineral operations would be authorized within the SRNRA. Section 8(a) of the Act withdrew all federal lands in the SRNRA from the operation of the mining, mineral leasing, and geothermal leasing laws subject to valid existing rights. Section 8(b) of the Act precluded the issuance of patents for locations and claims made prior to the establishment of the SRNRA. Section 8(c) of the Act prohibited all mineral operations within the SRNRA except where valid existing rights are established. Section 8(c) also prohibited the extraction of common variety minerals such as stone, sand, and gravel except if it is used in the construction and maintenance of roads and other facilities within the SRNRA and the excluded areas. Finally, section 8(d) directed the Secretary to promulgate supplementary mineral regulations to promote and protect the purposes for which the SRNRA was designated.

Provisions of the Proposed Rule

This proposed rule has been prepared pursuant to section 8(d) of the Act and would supplement existing Forest Service regulations pertaining to locatable mineral operations in the SRNRA and provide new regulations pertaining to outstanding mineral rights on National Forest System lands in the SRNRA. Accordingly, mineral operations in the SRNRA would not only be subject to the provisions of this rule but also to the applicable provisions of 36 CFR parts 228, 251, and 261, among others. The proposed rule clearly states that if there is a conflict or inconsistency with provision of other applicable regulations, the provisions of this rule would take precedence to the extent permitted by law.

The proposed rule divides mineral operations in the SRNRA into three categories—operations under the General Mining Laws, operations pursuant to outstanding mineral rights, and extraction of common variety mineral materials. There are no reserved mineral rights in the SRNRA, consequently, there is no need to address this category of mineral ownership in the proposed rule. In the event of a land acquisition that results in reserved mineral rights in the SRNRA, the current regulations at 36 CFR 251.15 provide sufficient direction to govern this activity and to protect the values for which the SRNRA was established.

The proposed rule is specifically designed to supplement existing locatable mineral regulations at 36 CFR part 228, subpart A, and thus to provide a greater degree of protection for the natural resources in the SRNRA than would be provided under 36 CFR part 228, subpart A, alone. This additional protection would be accomplished in several ways: (1) By the expansion of the types of mineral operations subject to the requirement for a plan of operations; (2) by setting additional reclamation standards; and (3)

providing expedited suspension procedures where harm or damage to resources or to people is imminent or is occurring. These and the other provisions of the proposed rule would enable the Forest Service to administer mineral operations in the SRNRA consistent with the purposes for which the area was established.

Section-by-Section Explanation of the Proposed Rule

This proposed rule would establish a new subpart G, Smith River National Recreation Area, in part 292 of Title 36 of the Code of Federal Regulations. A section-by-section explanation of the proposed rule follows.

Section 292.60, Purpose and scope. Paragraph (a) of the proposed § 292.60 explains that the purpose of this rule is to establish the rules and procedures for regulating mineral operations on National Forest System lands in the SRNRA so that they are in conformance with the Act. Paragraph (b) explains that rules and procedures in this rule apply only to National Forest System lands in the SRNRA. Paragraph (c) notes that this rule supplements existing Forest Service mineral regulations and that mineral operations on National Forest System lands in the SRNRA will continue to be subject to other applicable regulations governing these activities, particularly parts 228, 251, and 261 of this chapter. Paragraph (d) provides that, to the extent provided by law, the provisions of this rule shall take precedence over the provisions of other applicable regulations if there is a conflict or inconsistency between them. Finally, the last paragraph states that mineral operations approved or determined to be acceptable before the effective date of this proposed rule would continue to operate under the conditions of approval or acceptability including the specified period of operations. While there are no known operations at the time of publication of this proposed rule, that could change by the time of adoption of a final rule; thus, a transitional provision is needed.

Section 292.61, Definitions. This section defines special terms used in the proposed rule, some of which have been previously established or used in other rules or directives. However, the definitions included in the proposed § 292.61 define the terms as they are used in the proposed rule.

Section 292.62, Plan of operations requirements. Proposed § 292.62(a) would reduce the amount of discretion that the authorized officer currently has under 36 CFR 228.4(a) in determining whether a plan of operations or a notice of intent is required for a proposed mineral operation. In addition to the requirements of 36 CFR 228.4 for submitting a plan of operations or a notice of intent, this proposed rule would require a plan of operations for some mineral operations that in other locations have been routinely conducted under a notice of intent. For example, to operate mechanical or mechanized equipment such as a suction dredge and sluice under the proposed rule would require a plan of operations. Given the special status of the SRNRA and the special statutory management direction for the area set by Congress, further regulation of these kinds of operations is necessary in order to maintain the resource values which prompted its designation.

The information requirements specified in proposed § 292.62(b) are the same information that has been routinely gathered by the Forest Service from Bureau of Land Management records, county records, and the operator when a plan of operations is submitted for an area withdrawn from disposition under the General Mining Laws. The burden of gathering this information is now being shifted from the Forest Service to the operator since this information should be readily available to the operator if it does exist. The requirement to have the operator submit this information as part of the plan of operations should decrease the cost and the amount of time it takes for the Forest Service to collect the information, and, thereby, to make a valid existing rights determination.

Proposed § 292.62(c) outlines the minimum operating elements that must be included in a plan of operations in the SRNRA. The information requirements found at 36 CFR 228.4(c) and 228.8 that are generally applicable for a plan of operations on National Forest System lands are also applicable to a plan of operations proposed within the SRNRA. In addition to these specific information requirements, this proposed rule for the SRNRA would require an operator, who is not the claim owner, to submit a copy of the authorization granting the operator permission to conduct operations on a mining claim owned by another party. The existing regulations at 36 CFR 228.8(g) allow the authorized officer several options as to when reclamation activities can occur. These activities can take place upon depletion of the mineral deposit or sometime during the operation when it is practicable or within 1 year after the operations have concluded, unless the authorized officer allows for a longer time. In contrast, reclamation activities for mineral operations under the proposed rule would occur concurrently with the mineral operations whenever practicable. A requirement for concurrent reclamation would restore the land to another useful productivity in the shortest possible time. This requirement is essential to meet the statutory requirements to protect and preserve the values of the SRNRA.

Section 292.63, Plan of operations. Proposed § 292.63 establishes the procedures by which a plan of operation for mineral operations on mining claims in the SRNRA would be processed.

Proposed § 292.63(a) explains that the first item considered by the authorized officer is whether the operator has furnished the information required by § 292.62(b) to help substantiate valid existing rights. For reasons of efficiency, it is logical for the authorized officer to first determine whether the operator has discovered a valuable ore deposit before undertaking a review of that part of the plan of operations which describes in detail how the deposit is to be developed. Following the initial review, the authorized officer must notify the operator in writing whether the information required in § 292.62(b) has been provided or whether additional information still needs to be provided. Once the information required by § 292.62(b) has been provided, the authorized officer notifies the operator when the valid existing rights determination is expected to be completed.

Proposed § 292.63(b) explains that if the determination finds valid existing rights have not been established, the authorized officer must notify the operator of the determination, the reasons for such a determination, and that the development activities as contemplated in the plan of operations cannot be conducted.

Proposed § 292.63(c) explains that if the determination finds valid existing rights have been established, the authorized officer notifies the operator that this determination has been made and that the Forest Service is beginning a review of the proposed plan of operations and specifies the date when the Forest Service expects to complete the review.

Proposed § 292.63(d) directs that upon completion of the review of that part of the plan of operations that contains the operational and reclamation elements specified in proposed § 292.62(c), the authorized officer must notify the operator in writing the results of the review as specified in § 228.5(a).

Proposed § 292.63(e) would limit the maximum period for which a plan of operations is approved to five years; for operations beyond 5 years, the operator

would have to submit a new plan in accordance with the specifications of § 292.62 of this proposed rule. The 5-year limit was chosen with large projects in mind. It would provide the authorized officer a more frequent and consistent approach to reviewing and updating operating conditions and ensuring the approved plan of operations remains consistent with the purposes for which the SRNRA was established. The 5-year limit will have little to no effect on the typical small-scale operation which last only one or two years from start to finish.

Proposed § 292.63(f) explains that substantive changes to an approved plan of operations must be reviewed and approved by the authorized officer. Under this paragraph, the operator has the option to submit a modification of an approved plan of operations, as provided for in 36 CFR 228.4(e), which clearly identifies the elements that are different from the previously approved plan of operations, or to submit a supplemental plan of operations pursuant to 36 CFR 228.4(d).

Section 292.64, Plan of operations suspension. Proposed § 292.64 authorizes the suspension of mineral operations under an approved plan of operations by the Forest Service authorized officer, if the operator is not in compliance with applicable law, regulations, or the terms and conditions of the approved plan. If an operator is found to be in noncompliance, the authorized officer must provide the operator with the reasons why the plan of operations is not in compliance with the laws, regulations, or the approved plan of operations and a reasonable time to abate the noncompliance. Generally, the operator will have at least 30 days after the notice of noncompliance is issued to correct the noncompliance before a suspension becomes effective. However, for those instances that present an imminent threat of harm to public health, safety, or the environment or where such harm is already occurring, the authorized officer can take immediate action to alleviate the threat or damage. This immediate suspension authority would allow the authorized officer to take steps to avoid or minimize the risk of harm to persons and the environment. Only after the harm or risk of harm has been abated would the authorized officer be required to notify the operator of the suspension and provide him or her with an opportunity to respond.

Section 292.65, Operating plan requirements. Proposed § 292.65 establishes that operating plans are required for mineral operations involving outstanding mineral rights; that is, mineral rights owned by a party other than the surface owner at the time the surface estate was conveyed to the Federal government.

Proposed § 292.65(a) specifies that all individuals who want to exercise outstanding mineral rights in the SRNRA must submit an operating plan to the authorized officer at least 60 days in advance of surface occupancy.

Proposed § 292.65(b) specifies the information that an operator must provide in order to conduct mineral operations involving outstanding mineral rights where the surface estate is within the SRNRA. The operating plan must include information such as: (1) Evidence of ownership of the outstanding mineral rights, (2) the name of a designated field representative, (3) a map showing the location and dimension of all improvements, (4) a plan of operations including a schedule for construction and drilling, and (5) a soil erosion and sedimentation control plan.

Section 292.66, Operating plan acceptance. Proposed § 292.66 establishes the procedures by which operating plans in the SRNRA would be processed.

Proposed § 292.66(a) requires the authorized officer to review that portion of the operating plan related to substantiating outstanding mineral rights and notify the operator whether the information required to substantiate ownership of outstanding mineral rights has been provided to the Forest Service. If more information must be provided by the operator, the Forest Service would specify what is needed. If no more information is necessary for the Forest Service to complete its review, the authorized officer would indicate when the review is expected to be completed.

Proposed § 292.66(b) would specify that if outstanding mineral rights have not been verified, the authorized officer would notify the operator of the finding, the reasons for such a finding, and that the proposed operation cannot be conducted.

Proposed § 292.66(c) would specify that if outstanding mineral rights have been verified, the authorized officer would notify the operator that outstanding mineral rights have been verified, that the Forest Service would begin a review of the proposed operating plan, and the date when the Forest Service would expect to complete the review.

Proposed § 292.66(d) explains that the authorized officer will focus the review of the operating plan on whether the development activities proposed are consistent with the rights granted by the deed, consistent with the SRNRA Management Plan, and whether the development activities will utilize the least amount of surface lands necessary for the operation.

Proposed § 292.66(e) would specify that upon completion of the review of the operating plan, the authorized officer would notify the operator of the findings. If the findings indicate that the proposed operating plan is consistent with the rights granted by the deed of conveyance, consistent with the SRNRA Management Plan, and uses only that portion of the surface as is absolutely necessary, the operating plan would be determined to be acceptable to the Forest Service. If the findings indicate that the proposed operating plan does not meet all three criteria listed at § 292.66 (d)(1) through (d)(3), the authorized officer must specify the reasons why the proposed operating plan does not meet the three listed criteria, propose changes to the operating plan to make it consistent with the three criteria, and attempt to negotiate the proposed changes with the operator.

Proposed § 292.66(f) would require that another operating plan be submitted if additional operations not included in an acceptable operating plan are proposed and that the process as outlined in § 292.66 would be followed. This provision is similar to that in § 228.5(c) and § 292.63(f) of the proposed rule.

By requiring parallel information and review of operations under outstanding mineral rights, the Forest Service can ensure that the values for which the SRNRA was established are protected, and operators can be assured that requirements for negotiating modifications to an operating plan are consistent with those required of other mineral programs.

Section 292.67, Mineral material operations. Proposed § 292.67 states that the disposal of common variety mineral materials would be governed by the existing mineral material regulations set forth at 36 CFR part 228, subpart C, and would require that proposals for the extraction and removal of common variety mineral materials within the SRNRA would be approved only if the material is used within the SRNRA or in one of the four excluded areas identified by the Act.

Section 292.68, Indemnification. This section would provide a means of protecting the United States Government from liability as a result of claims, demands, losses, or judgments caused by an operator's use or occupancy. In addition, the operator would be required to pay the costs

incurred by the Forest Service or other agencies resulting from noncompliance with an approved plan of operations or an agreed to operating plan.

Operators have not had to bear any of the costs incurred by the Forest Service to administer mineral projects on National Forest System lands even if operations were not being conducted under the conditions approved or agreed upon. Proposed § 292.68(c) would require those operators who do not abide by the conditions of an approved plan of operations or agreed upon operating plan to pay the costs incurred by the Forest Service resulting from noncompliance. It is believed that if an operator was required to reimburse the Forest Service for the costs incurred by the Forest Service resulting from noncompliance, there would be less noncompliance.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this regulation is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this proposed rule is not subject to OMB review under Executive Order 12866.

Moreover, this proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act because of its limited scope and application. Also, this proposed rule does not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete in local or foreign markets.

Environmental Impact

Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The agency's preliminary assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. A final determination will be made simultaneously with adoption of the final rule.

Controlling Paperwork Burdens on the Public

Section 292.62(b) of this proposed rule specifies that in addition to the requirements of § 228.4, an operator must provide information to support valid existing rights as part of a plan of operations. Also, proposed § 292.65(b) requires those who wish to exercise outstanding mineral rights to submit an operating plan. The provisions of the proposed rule applicable to locatable minerals are supplementary to the existing information required by 36 CFR 228.4 which still apply for plans of operations. The provisions of the proposed rule applicable to outstanding mineral rights represent new information requirements as defined in 5 CFR part 1320, Controlling Paperwork Burdens on the Public. Although the proposed rule requires the operator to submit more information with a plan of operations than applies under part 228, subpart A, the information is readily available to the operator and does not require additional effort or information that the operator does not already have to acquire to conduct operations.

In accordance with the rules of 5 CFR part 1320 and the Paperwork Reduction Act of 1980 as amended (44 U.S.C. 3507), the Forest Service is requesting Office of Management and Budget review and approval of the information required to be addressed in a plan of operations or an operating plan. The agency estimates that an operator preparing a plan of operations will spend an average of 2 hours gathering and submitting the information related to valid existing rights and another 2 hours preparing and submitting the minimal information on the proposed operation for Forest Service review and approval. The agency also estimates that an operator preparing an operating plan will spend an average of 2 hours gathering and submitting the information related to outstanding mineral rights and the operation itself for acceptability. Reviewers who wish to comment on these information requirements should submit their views to the Chief of the Forest Service at the address listed earlier in this document as well as to the: Forest Service Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

No Takings Implications

In compliance with Executive Order 12630 and the Attorney General's Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings, the takings implication of this proposed rule have been reviewed and considered. It has been determined that there is no risk of a taking.

Civil Justice Reform Act

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule were adopted, (1) all State and local laws and regulations that are in conflict with this proposed rule or which would impede its full implementation would be preempted; (2) no retroactive effect would be given to this proposed rule; (3) it would not require administrative proceedings before parties could file suit in court challenging its provisions.

List of Subjects in Part 292

Administrative practice and procedure, Environmental protection, Mineral resources, National forests, National recreation areas, and Surety bonds.

Therefore, for the reasons set forth in the preamble, it is proposed to amend part 292 of chapter II of title 36 of the Code of Federal Regulations by adding a new subpart G to read as follows:

PART 292—NATIONAL RECREATION AREAS

Subpart G—Smith River National Recreation Area

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Subpart G—Smith River National Recreation Area

Authority: 16 U.S.C. 460bbb *et seq.*

§ 292.60 Purpose and scope.

(a) *Purpose.* The regulations of this subpart set forth the rules and

procedures by which the Forest Service regulates mineral operations on National Forest System lands within the Smith River National Recreation Area as established by Congress in the Smith River National Recreation Area Act of 1990 (16 U.S.C. 460bbb *et seq.*).

(b) *Scope*. The rules of this subpart apply only to mineral operations on National Forest System lands within the Smith River National Recreation Area.

(c) *Applicability of other rules*. The rules of this subpart supplement existing forest Service regulations concerning the review, approval, and administration of mineral operations on National Forest System lands including, but not limited to, those set forth at parts 228, 251, and 261 of this chapter.

(d) *Conflicts*. In the event of conflict or inconsistency between the rules of this subpart and other parts of this chapter, the rules of this subpart take precedence, to the extent allowable by law.

(e) *Applicability to ongoing operations*. Operations under an acceptable operating plan or an approved plan of operations in effect prior to the effective date of these regulations shall be for a limited time not to exceed 5 years. If operations have a shorter specified operating time, the shorter operating time shall remain in effect.

§ 292.61 Definitions.

The special terms used in this subpart have the following meaning:

Act means the Smith River National Recreation Area Act of 1990 (16 U.S.C. 460bbb *et seq.*).

Authorized officer means the Forest Service officer to whom authority has been delegated to take actions pursuant to the provisions of this subpart.

Hazardous substance means any substance so classified under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601).

Operating plan means the document submitted in writing by the owner or lessee, or a representative acting on behalf of an owner or lessee, to exercise outstanding mineral rights for minerals underlying National Forest System lands.

Outstanding mineral rights means the rights owned by a party other than the surface owner at the time the surface was conveyed to the United States.

SRNRA is the abbreviation for the Smith River National Recreation Area, located within the Six Rivers National Forest, California.

Valid existing rights for the purposes of this subpart means all mining claims on National Forest system lands in the SRNRA which: (1) Were properly located prior to November 16, 1990, for a mineral that was locatable at that time; (2) were properly maintained thereafter under the applicable law; (3) were supported by a discovery of a valuable mineral deposit within the meaning of the general mining law prior to November 16, 1990, which discovery has been continuously maintained since that date; and (4) continue to be valid.

Valid Existing Rights

§ 292.62 Plan of operations supplementary requirements.

(a) *Applicability*. In addition to the activities for which a plan of operations is required under § 228.4 of this part, a plan of operations is required when a proposed operation within the SRNRA involves mechanical or mechanized equipment, including a suction dredge and sluice.

(b) *Information to support valid existing rights*. A plan of operations within the SRNRA must include at least the following information relevant to the existence of valid existing rights for the period from November 16, 1990, to the present except as otherwise specified:

(1) The mining claim recordation serial number assigned by the Bureau of Land Management;

(2) A copy of the original location notice and conveyance deeds, if ownership has changed since the date of location;

(3) A copy of the affidavit of assessment work or notice of intention to hold the mining claim since the date of recordation with the Bureau of Land Management;

(4) Verification by the Bureau of Land Management that the holding fees have been paid or have been exempted;

(5) Sketches or maps showing the location of past and present mineral workings on the claims and information sufficient to locate and define the mining claim corners and boundaries on the ground;

(6) For lode and placer mining claims—

(i) An identification of the valuable mineral that has been discovered;

(ii) An identification of the site within the claims where the deposit has been discovered and exposed;

(iii) Information on the quantity and quality of the deposit including copies of assays or test reports, the width, locations of veins, the size and extent of any deposit; and

(iv) Evidence of past and present sales of the valuable mineral; and

(7) For millsite claims, information proving that the millsite is associated with a valid mining claim and that the millsite is used or occupied for mining or milling purposes.

(c) *Minimum information on proposed operations*. A plan of operations must include the information required at 36 CFR 228.4 (c)(1) through (c)(3) which includes information about the proponent and a detailed description of the proposed operation. In addition, if the operator and claim owner are different, the operator must submit a copy of the authorization or agreement under which the proposed operations are to be conducted. A plan of operations must also address the environmental protection requirements of 36 CFR 228.8 which includes reclamation. In addition, when practicable, reclamation will proceed concurrently with the mineral operation.

§ 292.63 Plan of operations approval.

(a) Upon receipt of a plan of operations, the authorized officer shall review the information related to valid existing rights and notify the operator in writing that one of the following circumstances apply:

(1) That sufficient information on valid existing rights has been provided and the date by which the forest Service expects to complete the valid existing rights determination; or

(2) That sufficient information on valid existing rights has not been provided and the specific information that still needs to be provided.

(b) If upon receipt, review, and verification of all requested information, the authorized officer finds that there is not sufficient evidence of valid existing rights, the authorized officer shall so notify the operator in writing, providing the reasons for the determination, and advise that the proposed mineral operation cannot be conducted.

(c) If upon receipt, review, and verification of all requested information, the authorized officer finds that there is sufficient evidence of valid existing rights, the authorized officer shall so notify the operator in writing, that a review of the proposed plan of operations is underway, and the date by which the review is expected to be completed. A prior determination that there is sufficient evidence of valid existing rights shall not bar the authorized officer from requesting the Department of the Interior to file a mineral contest against a mining claim if the authorized officer has a reasonable basis to question that determination.

(d) Upon completion of the review of the plan of operations, the authorized officer shall ensure that the minimum information required by § 292.62(c) has

been addressed and, pursuant to § 228.5(b) of this chapter, notify the operator in writing whether or not the plan of operations is approved.

(e) The period for which a plan of operations is approved may not exceed five years and must be explicitly identified by the authorized officer in giving notice of approval of a plan of operations.

(f) If an operator desires to make substantive changes in the type, scope, or duration of mineral operations from those described in an approved plan of operations and those changes will result in resource impacts not anticipated when the original plan was approved, the operator must submit a supplemental plan or a modification for review and approval of the authorized officer pursuant to § 292.62 of this proposed rule.

§ 292.64 Plan of operations suspension.

The authorized officer may suspend mineral operations due to an operator's noncompliance with applicable statutes, regulations, or terms and conditions of the approved plan of operations. Except as otherwise provided in this paragraph, prior to suspending operations, the authorized officer must first notify the operator in writing of the basis for the suspension and provide the operator with a reasonably sufficient time to respond to the notice of the authorized officer or to bring the mineral operations into conformance with applicable laws, regulations, or the terms and conditions of the approved plan of operations. Generally, the authorized officer shall notify the operator not less than thirty days prior to the date of the proposed suspension; however, in those cases that present a threat of imminent harm to public health, safety, or the environment, or where such harm is already occurring, the authorized officer may take immediate action to stop the threat or damage without prior notice. In such case, written notice and explanation of the action taken, shall be given the operator as soon as reasonably practicable following the suspension.

Outstanding Mineral Rights

§ 292.65 Operating plan requirements.

(a) Proposals for mineral operations involving outstanding mineral rights within the SRNRA must be documented in an operating plan and submitted in writing to the authorized officer for review at least 60 days in advance of surface occupancy.

(b) An operating plan for operations involving outstanding mineral rights within the SRNRA must include the following:

(1) The name and legal mailing address of the operator, owner, and any lessees, assigns, and designees;

(2) A copy of the deed or other legal instrument that conveyed the outstanding mineral rights;

(3) Sketches or maps showing the location of the outstanding mineral rights, the proposed area of operations, including but not limited to, existing and/or proposed roads or access routes identified for use, any new proposed road construction, and the approximate location and size of the areas to be disturbed, including existing or proposed structures, facilities, and other improvements to be used;

(4) A description of the type of operations which includes, at a minimum, a list of the type, size, location, and number of structures, facilities, and other improvements to be used;

(5) An identification of the hazardous substances and any other toxic materials, petroleum products, insecticides, pesticides, and herbicides that will be used during the mineral operation, and the means for disposing of such substances;

(6) An identification of the character and composition of the mineral wastes that will be used or generated and a method or strategy for their placement, control, isolation, or removal; and

(7) A reclamation plan to reduce or control on-site and off-site damage to natural resources resulting from mineral operations.

(i) The plan should provide, to the extent practicable, that reclamation proceed concurrently with the mineral operations and must show how public health and safety are maintained.

(ii) Reclamation measures to be identified and described in the plan include, but are not limited to, the following:

(A) Reduction and/or control of erosion, landslides, and water runoff;

(B) Rehabilitation of wildlife and fisheries habitat to be disturbed by the proposed mineral operation; and

(C) Protection of water quality.

(iii) The area of surface disturbance must be reclaimed to a condition or use that is consistent with the SRNRA Management Plan.

§ 292.66 Operating plan acceptance.

(a) Upon receipt of an operating plan, the authorized officer must review the information related to the ownership of the outstanding mineral rights and notify the operator in writing that one of the following circumstances apply:

(1) That sufficient information on ownership of the outstanding mineral rights has been provided and the date by which the review is expected to be completed; or

(2) That sufficient information on ownership of outstanding minerals rights has not been provided and the specific information that still needs to be provided.

(b) If the review shows outstanding mineral rights have not been verified, the authorized officer must notify the operator in writing that outstanding mineral rights have not been verified, the reasons for such a finding, and that the proposed mineral operation cannot be conducted.

(c) If the review shows outstanding mineral rights have been verified, the authorized officer must notify the operator in writing that outstanding mineral rights have been verified, that review of the proposed operating plan is underway, and the date by which the review is expected to be completed.

(d) The authorized officer shall focus review of the operating plan to determine if all of the following criteria are met:

(1) The operating plan is consistent with the rights granted by the deed;

(2) The operating plan is consistent with the SRNRA Management Plan; and

(3) The operating plan uses only so much of the surface as is necessary for the proposed mineral operations.

(e) Upon completion of the review of the operating plan, the authorized officer shall notify the operator in writing that one of the following two circumstances apply.

(1) The operating plan meets the criteria of paragraphs (d)(1) through (d)(3) of this section, and, therefore, the Forest Service has no objections to commencement of operations and that the Forest Service intends to monitor operations to ensure that operations conform to the operating plan; or

(2) The operating plan does not meet all of the criteria in paragraphs (d)(1) through (d)(3) of this section and the reasons why the operating plan does not meet the criteria. In this event, the authorized officer shall propose changes to the operating plan and attempt to negotiate modifications that will enable the operating plan to meet the criteria in paragraphs (d)(1) through (d)(3) of this section.

(f) To conduct mineral operations beyond those described in an acceptable operating plan, the owner or lessee must submit in writing an amended operating plan to the authorized officer at the earliest practicable date. The authorized officer shall have at least 60 days in which to review and respond to a proposed amendment before the new operations begin. The review will be conducted in accordance with

paragraphs (d)(1) through (d)(3) of this section.

Mineral Materials

§ 292.67 Mineral material operations.

Subject to the provisions of part 228, subpart C and part 293 of this chapter, the authorized officer may approve contracts and permits for the sale or other disposal of mineral materials, including but not limited to, common varieties of gravel, sand, or stone. However, such contracts and permits may be approved only if the material is not within a designated wilderness area and is to be used for the construction and maintenance of roads and other facilities within the SRNRA and the four areas identified by the Act that are within the exterior boundaries of the SRNRA but are not classified as part of the SRNRA.

Indemnification

§ 292.68 Indemnification.

The owner and/or operator of mining claims and the owner and/or lessee of outstanding mineral rights are jointly and severally liable in accordance with Federal and State laws for indemnifying the United States for:

(a) Injury, loss, or damage, including fire suppression costs, which the United States incurs as a result of the mineral operations;

(b) Payments made by the United States in satisfaction of claims, demands or judgments for an injury, loss, or damage, including fire suppression costs, which result from the mineral operations; and

(c) Cost incurred by the Untied States for any action resulting from noncompliance with an approved plan of operations or activities outside a mutually agreed to operating plan.

Dated: June 9, 1995.

David G. Unger,

Associate Chief.

[FR Doc. 95–15360 Filed 6–22–95; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL–5226–9]

Notice of Open Meeting of the Negotiated Rulemaking Advisory Committee for Small Nonroad Engine Regulations

AGENCY: Environmental Protection Agency.

ACTION: Change in dates of FACA Committee Meeting—Negotiated Rulemaking on Small Nonroad Engine Regulations.

SUMMARY: On June 9, 1995, (60 FR 30506) EPA announced the next meeting of the Advisory Committee to negotiate the Phase II rule to reduce air emissions from small nonroad engines. The meeting was originally scheduled to start on June 27, 1995 at 10:00 am. The meeting will now start the next day, on June 28, 1995. The meeting will still end at 4:00 pm on June 27, 1995.

DATES: The committee will now meet on June 28, 1995 from 10:00 a.m. to 5:00 p.m. and on June 29, 1995 from 8:00 a.m. to 4:00 p.m.

ADDRESSES: The location of the meeting will still be the Courtyard by Marriott, 3205 Broadwalk, Ann Arbor, MI 48108; phone: (313) 995–5900.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the substantive matters of the rule should contact Lisa Snapp, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Rd., Ann Arbor, MI 48108; (313) 668–4200. Persons needing further information on committee procedural matters should call Deborah Dalton, Consensus and Dispute Resolution Program, Environmental Protection Agency, 401 M Street, S.W. Washington, DC 20460, (202) 260 260–5495, or the Committee's facilitators, Lucy Moore or John Folk-Williams, Western Network, 616 Don Gaspar, Santa Fe, New Mexico, 87501 (505) 982–9805.

Dated: June 20, 1995.

Deborah Dalton,

Designated Federal Official.

[FR Doc. 95–15551 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[IA–15–1–6829b; FRL–5210–6]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the state of Iowa. The state's request for a revision to the SIP includes provisions for enhanced monitoring, special requirements for nonattainment areas, and adoption of EPA definitions. These revisions fulfill Federal regulations which strengthen maintenance of established air quality standards.

In the final rules section of the **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal, because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If the 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. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be received on or before July 24, 1995.

ADDRESSES: Comments may be mailed to Christopher D. Hess, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551–7213.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: May 2, 1995.

Dennis Grams,

Regional Administrator.

[FR Doc. 95–15237 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 70

[CA 147–1–6995–b; FRL–5216–4]

Clean Air Act Proposed Approval of Title V Operating Permits Program Revisions; Proposed Approval of Amended Synthetic Minor Operating Permit Program as a State Implementation Plan Revision; Bay Area Air Quality Management District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On November 29, 1994, EPA proposed to grant interim approval to the title V operating permits program and full approval to the synthetic minor operating permit program submitted by the Bay Area Air Quality Management District (Bay Area, BAAQMD, or District) for the purpose of complying with title V of the Clean Air Act (Act) in the case of the former, and for creating federally enforceable limits on potential to emit in the case of the latter. Bay Area has since revised the two

programs, and this document addresses those revisions. In this document, EPA is proposing approval of Bay Area's title V operating permits program revisions which add optional permit shield provisions, clarify permit application requirements, and make other minor program changes in response to local concerns. EPA is also proposing to approve revisions to Bay Area's synthetic minor regulations which clarify permit modification requirements under the federally enforceable state operating permit program (FESOP). EPA is proposing approval of the revised synthetic minor regulations as a revision to Bay Area's portion of the California State Implementation Plan (SIP) and pursuant to section 112(l) of the Act.

In the Final Rules Section of this **Federal Register**, EPA is promulgating direct final approval of Bay Area's title V and FESOP revisions without prior proposal because EPA views these changes as noncontroversial amendments and anticipates no adverse comments. A detailed rationale for these approvals is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rulemaking. 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. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by July 24, 1995.

ADDRESSES: Written comments on this action should be addressed to: Celia Bloomfield, Operating Permits Section (A–5–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the District's submittal, EPA's Technical Support Document, and other supporting information used in developing the proposed approvals are available for public inspection at EPA's Region IX office during normal business hours.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield (telephone 415/744–1249), Operating Permits Section (A–5–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: On November 29, 1994, EPA proposed in the **Federal Register** to grant interim approval to Bay Area's title V operating permits program (59 FR 60939) in accordance with title V of the Act (as amended in 1990) and 40 CFR part 70 (the title V implementing regulations). In the same notice, EPA proposed approval of Bay Area's synthetic minor program based on the June 28, 1989 (54 FR 27274) approval criteria for federally enforceable state operating permit programs. On February 1, 1995, Bay Area adopted revisions to Regulation 2, Rule 6 (Regulation 2–6) and the District's Manual of Procedures, Volume II, Part 3 (MOP) that implement the District's title V and synthetic minor programs. These revisions were not made in response to the deficiencies identified in the proposed rulemaking, but rather to address local issues and concerns. EPA is proposing direct final approval of the amendments to coordinate the effective date of the title V and FESOP programs with the effective date of the revisions.

Amendments to Bay Area's title V program were submitted to EPA by the California Air Resources Board (CARB) on March 23, 1995. The regulations covered by this direct final approval include: Regulation 2, Rule 6, Sections 232, 233, 234, 305, 307, 311, 403.1, 403.1.1, 403.1.2, 403.1.3, 404.6, 404.7, 405.2, 405.4.1, 405.4.2, 405.6, 405.6.1, 405.6.2, 409.12, 410.6, 411, 418.3, 420, 421.3, 421.4, 422, 422.3, 422.4, 422.6, 423, 423.2.1, 423.5; and the Manual of Procedures, Volume II, Part 3. Bay Area's synthetic minor program amendments were submitted to EPA by CARB on March 31, 1995. The regulations covered by this direct final SIP and section 112(l) approval include: Regulation 2, Rule 1, Section 129; and Regulation 2, Rule 6, Sections 232, 234, 310, 311, 403, 404, 420, 421, 422, and 423. For further information, please see the direct final action which is located in the Final Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 25, 1995.

David P. Howekamp,

Acting Regional Administrator.

[FR Doc. 95–15036 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–W

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40 CFR Part 180

[OPP–300390; FRL–4962–6]

RIN 2070–AC18

Dimethoate; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish an import tolerance for total residues of the insecticide dimethoate including its oxygen analog in or on the raw agricultural commodity blueberries. EPA is issuing this proposal on its own initiative pursuant to a project to harmonize certain tolerances with those established by the Canadian government.

DATES: Comments, identified by the document control number [OPP-300390], must be received on or before July 24, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. 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 [OPP-300390]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Forrest, Product Manager (PM) 14, Registration Division (7505C), Office of Pesticide Programs,

Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6600; e-mail: forrest.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Own its own initiative and pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), EPA is proposing to amend 40 CFR 180.204 by establishing an import tolerance for total residues of the insecticide dimethoate including its oxygen analog in or on the raw agricultural commodity blueberries at 1 part per million (ppm). As part of the Canada-U.S. Trade Agreement (CUSTA), and through the Pesticides Technical Working Group's Maximum Residue Limit (MRL) Harmonization Pilot Project, the Canadian government has requested that the U.S. establish a tolerance of 1 ppm for residues of dimethoate in or on blueberries. This insecticide is registered for use on blueberries in Canada, but not in the U.S. The Canadian tolerance is 1 ppm. The Agency has reviewed Canadian crop field trial residue data and determined that they are adequate to support an import tolerance. All relevant materials have been evaluated. The toxicological data considered in support of the proposed tolerance include:

1. A 3-month feeding study in rats fed diets containing 0, 2, 8, 32, 50, and 400 ppm with a no-observed-effect level (NOEL) for plasma, red blood cell and brain cholinesterase inhibition of 32 ppm (equivalent to 1.6 milligrams (mg)/kilogram (kg)/day) and a systemic NOEL of 50 ppm (equivalent to 2.5 mg/kg/day) based on depressed growth and food consumption, and increased kidney and liver weights ratios at the 400-ppm dose level.

2. A 3-month feeding study in dogs fed diets containing 0, 2, 10, 50, 1,500, and 3,000 ppm with a NOEL for red blood cell cholinesterase inhibition of 2 ppm (equipvalent to 0.05 mg/kg/day) and a NOEL for systemic effects of 50 ppm (equivalent to 1.25 mg/kg/day) based on tremors and decreased food consumption in females at the 1,500-ppm dose level.

3. A 1-year feeding study in dogs fed diets containing 0, 5, 20, or 125 ppm with a NOEL of less than 5 ppm (equivalent to less than 0.18 mg/kg/day) based on decreased brain and red blood cell cholinesterase in males and decreased liver weight in females at the 5-ppm dose level.

4. A two-generation reproduction study in rats fed diets containing 0, 1, 15, or 65 ppm (equivalent to 0/0, 0.8/0.9, 1.2/1.3, or 5.46/6.04 mg/kg/day for males/females) with a tentative reproductive NOEL of 15 ppm based on decreased fertility in the F1b and F2a, and F2b matings; decreased pup weight during the lactation period for both sexes and generations; and decreased live births in the F2b litters.

5. A developmental toxicity study in rats given gavage doses of 0, 3, 6, or 18 mg/kg/day with no developmental toxicity observed under the conditions of the study. The NOEL for maternal toxcity was established at 6 mg/kg/day; rats fed 18 mg/kg/day (lowest-effect level) displayed hpersensitivity, tremors, and unsteady gait.

6. A developmental toxicity study in rabbits given gavage doses of 1, 10, 20, or 40 mg/kg/day from day 7 to day 19 of gestation with a developmental NOEL of 20 mg/kg/day based on significant reduction in fetal weight at the 40 mg/kg/day dose level. The maternal NOEL/LEL were 10/20 mg/kg/day based on body weight decrement at 20 mg/kg/day.

7. A 2-year chronic feeding/carcinogenicity study in rats fed diets containing 0, 5, 25, or 100 ppm (equivalent to 0, 0.25, 1.25, or 5.0 mg/kg/day) with a systemic NOEL of 25 ppm based on increased female mortality, decreased male body weight gain, anemia in males, and increased leukocytes in male and female rats at the 100-ppm dose level. The NOEL for cholinesterase inhibition was established at 5 ppm based on cholinesterase inhibition at the 25-ppm dose level. In male rats, there were dose-related trends for (1) spleen hemangiosarcomas (malignant tumors associated with connective tissue and blood and lymph vessels); (2) combined spleen hemangioma (benign tumors) and hemangiosarcoma; and (3) combined spleen hemangioma and hemangiosarcoma, and skin hemangiosarcoma. Furthermore, there were significant pair-wise comparisons between control and the high-dose (100 ppm) for spleen (hemangioma/hemangiosarcoma) and in the combined tumors of spleen and skin hemangioma/hemangiosarcoma and lymph angioma/angiosarcoma (benign and malignant tumors made up of lymph vessels). There was also a significant difference by pair-wise comparison between the control and low dose (5 ppm) for (1) lymph angiosarcoma, (2) combined lymph angioma and angiosarcoma, and (3) combined spleen and skin hemangioma/hemangiosarcoma and lymph angioma/angiosarcoma. There were no significant tumor increases in female rats.

8. A 78-week carcinogenicity study in B6C3F1 mice fed diets containing 0, 25, 100, or 200 ppm (equivalent to 0, 3.75, 15, or 30 mg/kg/day). In male mice there were significant dose-related incrased trends for (1) combined lung adenoma and/or adenocarcinoma, (2) for lymphoma, and (3) for the combined group of lymphoma, reticularsarcoma, and leukemia. In female mice there were significant dose-related trends for (1) liver carcinoma and for (2) combined liver adenoma and/or carcinoma.

9. Dimethoate is regarded as a mutagenic compound based on the results of studies designed to determine gene mutation and structural chromosome aberrations. Dimethoate is a bacterial mutagen and shows equivocal results for gene mutations in mammalian cells. It produces clastogenic effects in several studies *in vitro* and *in vivo*, and there are suggestive results for dominant-lethal effects. The National Toxicology Program has concluded that dimethoate is a mutagenic compound based on its testing for gene mutation and chromosomal aberrations. A third category of studies to determine other genotoxic effects is a data gap for dimethoate.

Dimethoate has been classified as a possible human carcinogen (category C) by the Office of Pesticide Programs' Health Effects Division's Peer Review Committee. The Peer Review Committee supports this classification based on the appearance of equivocal hemolymphoreticular tumors in male mice, the compound-related (no dose response) weak effect of combined spleen (hemangioma and hemangiosarcoma), skin (hemangiosarcoma), and lymph (angioma and angiosarcoma) tumors in male rats, and positive mutagenic activity associated with dimethoate.

The Peer Review Committee concluded that the lung tumors seen in male mice were not biologically significant tumors related to compound administration since there were no statistically significant differences based on pair-wise comparisons with controls and each dose level. The incidence of lung tumors in the control groups was variable, and there was a high background level of these tumors. The increase in lymphoma observed in male mice in the high-dose group was of borderline statistical significance by pair-wise comparison with controls. The incidence of lymphoma in mice is also common and variable. The Committee agreed that the increased incidence for the combined hemolymphoreticular tumors in male mice is compound related, but could only classify this

incidence as equivocal. The incidence of hemolymphoporeticular tumors in male mice was relatively low and consistent with historical control, only occurred in one sex (males), and was evident only in the highdose group.

The Committee concluded that in female mice there were no significant pair-wise comparisons, there was only the trend with combined tumors, and the combined incidence was similar to historical controls. In addition, there also was no evidence of precursor lesions to carcinogenicity. Regarding the carcinogenicity study in rats, the Committee concluded that although there were significant pair-wise comparisons at the low and high doses for all tumors combined, these tumors did not indicate much more than a weak effect.

EPA has concluded that dimethoate poses no greater than a negligible cancer risk to humans; therefore, the Agency has chosen to use reference dose calculations to estimate dietary risk from dimethoate residues. The dietary risk exposure analysis used a Reference Dose (RfD) for dimethoate of 0.0005 mg/kg/body weight/day, based on a NOEL of 0.05 mg/kg/bwt/day for brain cholinesterase inhibition from a 2-year feeding study in rats, and an uncertainty factor of 100. The anticipated residue contribution (ARC) for the general population from published uses and the proposed use on blueberries utilizes 22 percent of the RfD. The ARC for the most highly exposed subgroup, nonnursing infants, from published uses and the proposed use on blueberries, utilizes 57% of the RfD.

The nature of the residue in plants is adequately understood and an adequate analytical method, gas-liquid chromatography with a thermionic detector, is available for enforcement purposes. An analytical method for enforcing this tolerance has been published in the Pesticide Analytical Manual (PAM), Vol. II. No secondary residues in meat, milk, poultry, or eggs are expected since blueberries are not considered a livestock feed commodity.

The pesticide is considered useful for the purpose for which the tolerance is sought. There are presently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR 180.204 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP–300390]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [OPP-300390] (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 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: June 15, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

2. In § 180.204, by amending paragraph (a) by amending the table therein to add and alphabetically insert the following commodity, to read as follows:

§ 180.204 Dimethoate including its oxygen analog; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Blueberries[1]	1
* * * * *	

[1]There are no U.S. registrations as of (date of publication of final rule) for dimethoate on blueberries.

* * * * *

[FR Doc. 95–15427 Filed 6–20–95; 1:50 pm]

BILLING CODE 6560–50–F

40 CFR Parts 180 and 185

[OPP–300391; FRL–4962–7]

RIN 2070–AC18

Clethodim; Pesticide Tolerance and Food Additive Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish an import tolerance and a food additive regulation, respectively, for residues of the herbicide clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety in or on the raw agricultural commodity potatoes and the food additive commodities potato flakes and granules. EPA is issuing this proposal on its own initiative pursuant to a project to harmonize certain tolerances and food additive regulations with those established by the Canadian government.

DATES: Comments, identified by the document control number [OPP-300391], must be received on or before July 24, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. 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 [OPP-300391]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Product Manager (PM) 23, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-6224; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On its own initiative and pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act by (FFDCA), 21 U.S.C. 346a(e), EPA is proposing to amend 40 CFR 180.458 by establishing an import tolerance for residues of the herbicide clethodim and its metabolites containing the 2-cyclohexen-1-one moiety in or on the raw agricultural commodity potatoes at 0.5 part per million (ppm); and to add new § 185.1075 (40 CFR 185.1075) by establishing a food additive regulation for residues of the herbicide clethodim and its metabolites containing the 2-cyclohexen-1-one moiety in or on the food additive commodity potato granules and potato flakes at 1 part per million (ppm). Clethodim residues on potatoes grown in Canada and imported into the United States have been identified as a Canada-United States Trade Agreement (CUSTA) irritant. The Agency has reviewed Canadian crop field trial residue data and determined that they are adequate to support an import tolerance. All relevant materials have been evaluated. The toxicological data considered in support of the proposed tolerances and food additive regulation include:

1. Several acute toxicology studies placing the technical-grade herbicide in Toxicity Category II for primary dermal irritation, Toxicity Category III for oral and inhalation toxicity and primary eye irritation, and Toxicity Category IV for dermal toxicity.

2. A 2-year rat chronic toxicity/carcinogenicity study found the compound to be noncarcinogenic to rats under the conditions of the study. The systemic no-observed-effect level (NOEL) was 500 ppm (approximately 19 mg/kg/day), and the systemic lowest-observed-effect level (LOEL) was 2,500 ppm (approximately 100 mg/kg/day) based on the observed body weight gain, the increases in liver weights, and the presence of centrilobular hepatic hypertrophy.

3. An 18-month mouse carcinogencity study which showed the compound to be noncarcinogenic to mice under the conditions of the study. The systemic NOEL was 200 ppm (approximately 30 mg/kg/day), and the systemic LOEL was 1,000 ppm (approximately 150 mg/kg/day) based on treatment-related effects on survival, red cell mass, absolute and relative liver weights, and microscopic findings in liver and lung.

4. A 1-year feeding study in dogs with a systemic NOEL of 1 mg/kg/day in both sexes and a LOEL of 75 mg/kg/day based on increased absolute and relative liver weights, and alterations in hematology and clinical chemistry.

5. A developmental toxicity study in rats with a developmental and maternal NOEL and LOEL of 100 and 350 mg/kg/day, respectively. The LOEL for developmental toxicity was based on reductions in fetal body weight and increases in skeletal anomalies.

6. A developmental toxicity study in rabbits with a maternal toxicity NOEL and LOEL of 25 and 100 mg/kg/day, respectively. Maternal toxicity was manifested as clinical signs of toxicity and reduced weight gain and food consumption during treatment. Developmental toxicity was not observed, and therefore the developmental toxicity NOEL was 300 mg/kg/day (HDT).

7. A two-generation reproduction study in the rat with a parental toxicity NOEL and LOEL of 500 and 2,500 ppm (51 and 263 mg/kg/day), respectively, based on reductions in body weight in males, and decreased food consumption in both generations. The NOEL for

reproductive toxicity was 2,500 ppm (263 mg/kg/day, HDT).

8. A mutagenicity test with Salmonella Ames assay showed nonmutagenicity in three strains. Clethodim imine sulfone was negative for reverse gene mutation in *Salmonella* and *E. coli* exposed up to 10,000 *ug*/plate with or without activation. Clethodim was negative for chromosomal damage in bone marrow cells of rats treated orally up to toxic doses (1,500 mg/kg).

The dietary risk exposure analysis used a RfD of 0.01 mg/kg/body weight(bw)/day based on a NOEL of 1.0 mg/kg/bw/day and a safety factor of 100. The proposed use on potatoes for the U.S. population results in an Anticipated Residue Contribution (ARC) of 0.000571 mg/kg/bw/day, which represents 6% of the RfD. For nonnursing infants less than one year old, the ARC for the use on potatoes is 0.000860 mg/kg/bw/day, or 9% of the RfD.

The nature of the residue is adequately understood. A common moiety analytical method (gas chromatograph with a flame photometric detector in the sulfur mode) and a compound-specific confirmatory method are available for enforcement purposes. Prior to publication in the Pesticide Analytical Manual, Vol. II, both methods are available in the interim to anyone interested in pesticide enforcement. They can be requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M. St. SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm. 1132, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

Any secondary residues occurring in milk, eggs, or meat of livestock and poultry will be covered by the established tolerances for these commodities.The pesticide is considered useful for the purpose for which the tolerance is sought. There are currently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR parts 180 and 185 would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300391]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [OPP-300391] (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 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180 and 185

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

Dated: June 15, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

herefore, it is proposed that 40 CFR parts 180 and 185 be amended as follows:

PART 180—[AMENDED]

1. In part 180:

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

Authority: 21 U.S.C. 346a and 371.

b. By amending § 180.458 in the table therein by adding and alphabetically inserting the commodity potatoes, to read as follows:

§ 180.458 Clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one); tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Potatoes	0.5
* * * * *	

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

b. By adding new § 185.1075, to read as follows:

§ 185.1075 Clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one).

Food additive tolerances are established for the combined residues of the herbicide clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety in or on the following processed foods:

Food	Parts per million
Potato flakes[1]	1.0
Potato granules[1]	1.0

[1]There are no U.S. registrations as of (date of publication of final rule) for clethodim on potatoes.

[FR Doc. 95–15428 Filed 6–20–95; 1:50 pm]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket Nos. 91–221 and 87–8; DA 95–1355]

Broadcast Services; TV Ownership

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Commission granted an additional eleven-day extension of time to file reply comments in this proceeding in response to a request filed by The Black Citizens for a Fair Media, Center for Media Education, Chinese for Affirmative Action, Communications Task Force, Hispanic Bar Association, League of United Latin American Citizens, National Conference of Puerto Rican Women, Office of Communications of the United Church of Christ, Philadelphia Lesbian and Gay Task Force, Telecommunications Research Action Center, Wider Opportunities for Women, and the Women's Institute for Freedom of the Press (Petitioners). The Commission had already granted an extension of the original deadline for filing comments in this proceeding (April 17, 1995) to May 17, 1995, and had extended the original deadline for filing reply comments (May 17, 1995) to June 19, 1995. Petitioners requested an additional 60-day extension of time to file reply comments. The Commission determined that a brief extension was warranted to facilitate the development of a full and complete record, but declined to grant the full 60-day extension requested by Petitioners.

DATES: Reply comments are now due on June 30, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kim Matthews (202) 739–0774 or Robert Kieschnick (202) 739–0764, Mass Media Bureau.

SUPPLEMENTARY INFORMATION:

In the matter of Review of the Commission's Regulations Governing Television Broadcasting, MM Docket No. 91–221; Television Satellite Stations Review of Policies and Rules, MM Docket No. 87–8.

Order Granting Extension of Time for Filing Reply Comments

Adopted: June 15, 1995.

Released: June 15, 1995.

By the Chief, Mass Media Bureau:

1. On December 15, 1994, the Commission adopted a *Further Notice of Proposed Rule Making* regarding ownership of television stations. *Further Notice of Proposed Rule Making* in MM Docket Nos. 91–221 and 87–8, FCC 94–322 (Jan. 17, 1995) (*Notice*) 60 FR 6490, February 2, 1995. Comments on the *Notice* were initially due on April 17, 1995, and reply comments were initially due on May 17, 1995. By *Order* released April 7, 1995 60 FR 19566, April 19, 1995, the time for filing comments in this proceeding was extended to May 17, 1995, and the time for filing reply comments was extended to June 19, 1995.

2. On June 12, 1995, The Black Citizens for a Fair Media, Center for Media Education, Chinese for Affirmative Action, Communications Task Force, Hispanic Bar Association, League of United Latin American Citizens, National Conference of Puerto Rican Women, Office of Communications of the United Church of Christ, Philadelphia Lesbian and Gay Task Force, Telecommunications Research Action Center, Wider Opportunities for Women, and the Women's Institute for Freedom of the Press (Petitioners), filed a joint request for an additional 60-day extension of time to file reply comments in this proceeding. Petitioners argue primarily that additional time is needed to review and prepare a reply to comments filed in response to the Commission's *Notice*. Petitioners also argue that Congress is presently considering legislation that would ''effectively moot'' this proceeding and therefore obviate the need to prepare and file reply comments.

3. As set forth in Section 1.46 of the Commission's Rules, 47 C.F.R. § 1.46, it is our policy that extensions of time for filing comments in rulemaking proceedings shall not be routinely granted. Moreover, the initial comment period in this proceeding was longer than usual, and one 30-day extension of time has already been granted. However, in view of the circumstances outlined by Petitioners, we believe an additional 11-day extension of the reply comment deadline is warranted in order to facilitate the development of a full and complete record. We decline to grant a longer extension at this point in time based on speculation as to events that may or may not affect this proceeding.

4. Accordingly, It is Ordered that the Request for Extension of Time filed in MM Docket Nos. 91–221 and 87–8 by The Black Citizens for a Fair Media, Center for Media Education, Chinese for Affirmative Action, Communications Task Force, Hispanic Bar Association, League of United Latin American Citizens, National Conference of Puerto Rican women, Office of Communications of the United Church of Christ, Philadelphia Lesbian and Gay Task Force, Telecommunications Research Action Center, Wider Opportunities for Women, and the Women's Institute for Freedom of the Press is Granted to the extent detailed above and is otherwise Denied.

5. It is Further Ordered that the time for filing reply comments in the above-captioned proceeding is Extended to June 30, 1995.

6. This action is taken pursuant to authority found in Sections 4(i) and 303(r) of the communications Act of 1934, as amended, 47 U.S.C. 154(i) and

303(r), and Sections 0.204(b), 0.283, and 1.45 of the Commission's Rules, 47 CFR 0.204(b), 0.283, and 1.45.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 95–15394 Filed 6–22–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 45 and 52

Federal Acquisition Regulation; Government Property

AGENCY: Department of Defense.

ACTION: Notice of public meeting.

SUMMARY: The next public meetings of the Government Property Rewrite Team are scheduled for July 12, 1995, and July 13, 1995. Discussion will focus on a draft revised Government Property (Fixed-Price Contracts) clause.

DATES: *Public Meetings:* The public meetings will be conducted at the address shown below from 9:30 a.m. to 5:00 p.m., local time, on July 12, 1995, and July 13, 1995.

Draft Materials: Drafts of the materials to be discussed at the public meetings will be available no earlier than July 7, 1995, and may be obtained from Ms. Angelena Moy, (PDUSD (A&T) DP/MPI) at Room C–103, 1211 S. Fern St., Arlington, VA 22202–2808

ADDRESSES: *Public Meetings:* The public meetings will be held in Room 104, VSE Corporation, 2550 Huntington Ave., Alexandra, VA 22303.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, by telephone at (703) 604–5875, or by FAX at (703) 604–6709.

SUPPLEMENTARY INFORMATION: On September 16, 1994, (59 FR 47583) the Director of Defense Procurement, Department of Defense, announced an initiative to rewrite the Federal Acquisition Regulation (FAR) Part 45, Government Property, to make it easier to understand and to minimize the burdens imposed on contractors and contracting officers. The Director of Defense Procurement is providing a forum for an exchange of ideas and information with government and industry personnel by holding public meetings, soliciting public comments, and publishing notices of the public meetings in the **Federal Register.**

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 95–15255 Filed 6–22–95; 8:45 am]

BILLING CODE 5000–04–M

48 CFR Parts 209 and 252

[DFARS Case 92–D344]

Defense Federal Acquisition Regulation Supplement; Organizational Conflict of Interest

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule; withdrawal.

SUMMARY: The proposed rule published November 1, 1993, at 58 FR 58316, is hereby withdrawn. The rule proposed revisions to the Defense Federal Acquisition Regulation Supplement (DFARS) to add an organizational conflict of interest solicitation provision and contract clause for use in acquisitions for development, production, or testing of a defense acquisition program. These DFARS revisions have been determined to be unnecessary at this time.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 95–15254 Filed 6–22–95; 8:45 am]

BILLING CODE 5000–04–M

48 CFR Part 215

Defense Federal Acquisition Regulation Supplement; Field Pricing Reports

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comment.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to increase the threshold for requesting a field pricing report for cost-type proposals from offerors without significant estimating system deficiencies.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 22, 1995, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 95–D010 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule implements a recommendation of the Department of Defense Procurement Process Reform Process Action Team. The rule amends DFARS Subpart 15.8 by increasing, from $1,000,000 to $10,000,000, the threshold for requesting a field pricing report for cost-type proposals from offerors without significant estimating system deficiencies.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule primarily relates to application of Government resources for field pricing reviews. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected DFARS subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95–D010 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not impose any new information collection requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 215

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 215 is proposed to be amended as follows:

1. The authority citation for 48 CFR part 215 is revised to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

2. Section 215.805–5(a)(1)(A)(*3*) is amended by revising ''$1 million'' to read ''$10 million.''

[FR Doc. 95–15253 Filed 6–22–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 567

[Docket No. 94–74; Notice 2]

RIN 2127–AE71

Certification

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Termination of rulemaking proceeding.

SUMMARY: This notice terminates rulemaking to amend NHTSA's certification regulation to require the standardized display of a permanent metal vehicle manufacturer's label for all motor vehicles weighing more than 4,536 kg (10,000 lb).

FOR FURTHER INFORMATION CONTACT: Dr. Leon DeLarm, Chief, Pedestrian, Heavy Truck and Child Crash Protection Division, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590, (202) 366–4920.

SUPPLEMENTARY INFORMATION:

I. The Petition

On August 17, 1992, Michael Robinson, Director of the Michigan Department of State Police, petitioned NHTSA to amend the agency's certification regulations at 49 CFR 567.4 to require that manufacturers' labels on vehicles weighing more than 4,536 kg (10,000 lb) be made of a heavy gauge metal of a specified thickness with raised or recessed letters and numbers, and be riveted to the vehicle. Mr. Robinson also recommended specific locations for the placement of these labels, depending on the type of vehicle involved. Mr. Robinson stated that his petition was prompted by difficulties that the Motor Carrier Division of his Department had encountered in locating information identifying the gross vehicle weight rating (GVWR) and vehicle identification number (VIN) of commercial vehicles. Information identifying a commercial vehicle's GVWR is necessary, Mr. Robinson asserted, for the proper enforcement of the Commercial Driver License (CDL) requirements of the Federal Highway Administration's (FHWA's) Motor Carrier Safety Assistance Program. Under the CDL program, drivers are only licensed to operate vehicles within GVWR ranges for which they are qualified. Mr. Robinson contended that law enforcement officers often have difficulty determining the GVWRs of commercial vehicles since the labels on those vehicles are often damaged, painted over, or missing because they were not designed or constructed to withstand the rigors of commercial vehicle operation.

II. The NPRM

On September 26, 1994, NHTSA published a notice in the **Federal Register** (at 59 FR 49038) announcing that it had granted Mr. Robinson's petition, in part, and was proposing to amend the agency's certification regulations at 49 CFR 567.4 to require that the manufacturer's certification label on vehicles with a GVWR over 4,536 kg (10,000 lb) be made of metal, have raised or recessed letters and numbers, and be riveted or otherwise permanently affixed to the vehicle in locations specified in the petition. In granting the petition, the agency noted that not only would the use of permanent metal labels help to ensure that commercial vehicles are being driven by duly qualified and licensed operators, but it would also improve the accuracy of commercial vehicle GVWR information submitted to the FHWA's SAFETYNET system, which is shared with state personnel who monitor commercial motor carrier operations.

In the notice of proposed rulemaking (NPRM), NHTSA solicited comments on seventeen issues that the agency identified as being raised by the petition. These included questions on:

(1) whether there was a problem with labels on commercial vehicles becoming obliterated, painted over, or otherwise rendered illegible during the service life of he vehicle;

(2) the costs currently incurred by manufacturers in the purchase, printing, and application of labels;

(3) the types of material currently used for the labels on vehicles with a GVWR over 4,536 kg (10,000 lb);

(4) the sizes of the labels currently affixed to those vehicles;

(5) the incremental costs that vehicle manufacturers would incur to purchase, emboss, and affix permanent metal labels with raised or recessed letters and numbers;

(6) the incremental costs, if any, that label manufacturers would incur in producing metal labels with raised or recessed letters and numbers;

(7) the quantities in which vehicle manufacturers currently order labels;

(8) the time that is currently required for vehicle manufacturers to prepare and affix labels;

(9) the time that would be required for vehicle manufacturers to rivet or otherwise permanently affix metal labels;

(10) the special problems, if any, that vehicle manufacturers would have in affixing permanent metal labels;

(11) whether a particular metal, such as aluminum, stainless steel, etc. should be specified for the labels;

(12) whether a minimum thickness should be prescribed for the labels;

(13) whether a minimum size should be specified for the labels;

(14) whether a minimum height or depth should be specified for the letters and numbers embossed on the labels;

(15) whether any information should be added to or deleted from that currently required to appear on the label;

(16) whether trailers with a GVWR of 4,536 kg (10,000 lb) or less should also meet the requirements proposed for trailers above that weight;

(17) whether NHTSA should require some approach different from the proposed metal label requirement for preserving VIN labels.

III. Comments

NHTSA received 142 comments in response to the NPRM. Only five of these supported the proposal. Two of the supporting comments were from law enforcement entities. Lt. Bruce Bugg of the Georgia Public Service Commission stated that from his own experience in enforcing the CDL requirements, and from discussions with other law enforcement officers, he has come to believe that missing and obliterated certification labels are a common problem that could be partially alleviated through the use of more durable, embossed metal plates. The California Highway Patrol (CHP) also supported the metal label requirement because existing non-metallic labels are being removed with increasing frequency in an apparent attempt to circumvent the CDL requirements. Supporting comments were also received from the Wisconsin Department of Transportation and Advocates for Highway and Auto Safety, which expressed agreement with a need for metal certification labels. Additionally, the National Automobile Dealers Association (NADA) expressed support for an improved certification labelling scheme and agreed with the proposal to impose requirements that will assist with theft enforcement and with the administration of motor carrier regulations.

The remaining 137 comments were opposed to the proposal, either in whole or in part. Of these, 117 were essentially identical letters submitted primarily by multi-stage truck manufacturers. Those

comments expressed opposition to the proposal that only metal be used for certification labels, based on the contention that other materials are available that are cheaper, easier to imprint and install, and able to withstand the rigors of commercial use. These comments noted that the adhesive-backed plastic labels with clear protective outer coatings that are in current use cost only about fifty cents apiece, and can be prepared on a typewriter and affixed to the vehicle in a matter of minutes. In contrast, these comments noted that metal labels would be more costly, would require the use of an expensive embossing machine, and would require considerably more time to be riveted onto the vehicle.

In its comment opposing the proposal, Mack Trucks, Inc. noted that unlike the polyester film labels that it currently uses, which cannot be removed from a vehicle without being destroyed, a riveted metal label could be easily removed and transferred to another vehicle. General Motors Corporation (GMC) and Ford Motor Company made similar remarks, and noted that the adoption of a metal label requirement could increase the risk of vehicle theft, since such labels could be used to retag stolen vehicles.

Mack further questioned whether there is really a problem with the existing labels, in view of the fact that 49 CFR 565.4(b) requires a vehicle's ''GVWR class'' to be encoded into its vehicle identification number (VIN), which is stamped into the vehicle's frame rail and included in a number of other readily visible plates and labels affixed to the vehicle. The American Automobile Manufacturers Association (AAMA) also noted that a vehicle's GVWR can be obtained by decoding its VIN, and that the VIN is found not only on the vehicle's certification label, but also on a separate metal VIN plate that all of its members install. GMC expressed the opinion that requiring the VIN to be not only included in the certification label, but also stamped or engraved on a separate metal plate, would address the problems raised in the petition.

Ford noted that it improved the identification of its medium and heavy duty trucks approximately seven years ago by riveting a metal plate to the left door post of these vehicles on which the VIN was imprinted with embossed letters and numbers. Additionally, Ford prints the VIN and GVWR on a non-metallic self-adhesive label with a protective plastic covering that is affixed to the left door post. This label also includes a bar-coded VIN that a law enforcement officer can scan and down-load into a computer to minimize transcription errors.

Ford also noted that a long-term solution to the concerns raised in the petition would be realized if the ADVANTAGE I–75 Program and Heavy Vehicle Electronic License Plate (HELP) Program are successfully implemented. The goals of these programs are to reduce congestion, increase efficiency, and enhance the safety of users of major highway corridors through the application of a network of advanced highway, vehicle, and communication technologies. An automatic vehicle identification (AVI) transponder located in the commercial vehicle will transmit an electronic signal that, when decoded, will provide information such as the identity of the motor carrier, the gross weight of the vehicle, and the status of its registration and fuel tax payments.

The Recreational Vehicle Industry Association (RVIA) recommended that recreational vehicles (RVs) be exempted from the proposed metal certification label requirements, on the theory that the operators of RVs are not subject to the CDL requirements, precluding the need for enforcement officers to ascertain the GVWR of those vehicles. In separate comments, RV manufacturers such as Fleetwood and Winnebago took similar positions in opposing the proposed metal label requirements.

Thomas Built Buses expressed the opinion that no benefit would be served by returning to metal certification labels on buses, and that such a step would negate the progress it has made in using non-removable, non-reusable, tamper resistant, adhesive-backed, metallized labels. The AM General Corporation also faulted the proposal in that it would restrict the use of more conventional, and potentially technically superior, methods of vehicle identification. HYDRA-TECH noted that in its experience, plastic adhesive labels with clear protective coatings do not deteriorate and are easier to read than metal tags after several years of service.

The Flxible Corporation stated that it chose an adhesive backed aluminum foil label instead of a riveted rigid metal plate for its VIN tag because the aluminum foil cannot be removed without being completely destroyed. In contrast, Flxible noted that a metal plate may be left undamaged after its rivets are drilled out.

The National Truck Equipment Association (NTEA) noted that the nonmetallic labels in current use offer greater flexibility than metal labels for placement in highly visible locations. The NTEA also noted that non-metallic labels are more resistant to tampering or fraud than metal labels because they are produced with a self-voiding feature. The NTEA further stated that existing certification labels are sometimes intentionally or inadvertently removed by certain manufacturers and end-users, posing an enforcement problem that will not be resolved by requiring a metal label that is both expensive and difficult to mount.

Navistar International Transportation Corporation stated that the root cause of the problems cited in the petition is the fact that many final stage manufacturers do not install a certification label, even though they are instructed to do so in the documents they are furnished by the incomplete vehicle manufacturer. Navistar believes that this is a problem that merits NHTSA's attention.

The Freightliner Corporation recommended that NHTSA consider establishing a performance standard for adhesion and/or abrasion to ensure legibility and permanent integrity of labels without specifying a material or mounting method.

In response to the specific questions raised in the NPRM, most commenters stated that they are unaware of any problem with existing certification labels becoming obliterated, painted over, or otherwise rendered illegible during the service life of the vehicle. The comments further indicated that the materials most commonly used for certification labels are adhesive-backed plastic sheeting with a clear plastic overlay to preserve the information the labels contain. Some commenters stated that they use heavy aluminum foil with an adhesive backing. Most commenters stated that the certification labels they apply measure 2½ by 5 inches.

Most commenters also stated that they spend between eleven and seventy-five cents apiece for the certification labels that they presently use, and an additional dollar or two for imprinting the required information on the label and installing it on the vehicle. All commenters who addressed the cost issue stated that the costs of preparing and installing an embossed metal certification label would be significantly greater. Cost estimates for this increase ranged from four to fifteen times the amount that manufacturers are currently spending to prepare and apply certification labels. One factor contributing to these greater costs is the expensive embossing equipment that most manufacturers stated they would have to procure. The cost estimates for this equipment ranged from $5,000 to $14,000 per machine, with some manufacturers noting that they would have to obtain a separate machine for each of their production facilities. Additional costs were predicted for

retooling door frames and door jambs to provide a flat surface necessary for the secure attachment of metal certification labels. Commenters reported that it currently takes on the average of five to ten minutes to imprint a nonmetallic certification label and install it on a vehicle. The time expenditure predicted for the installation of metal labels was substantially the same, although one commenter noted that additional time would be required to drill the four holes necessary to rivet the label to the vehicle. Based on a total annual production of more than 250,000 vehicles with a GVWR over 10,000 lbs., the NTEA estimated additional material and labor costs approaching twelve million dollars if metal certification labels were required.

Most comments stated that it would be design restrictive to specify the material composition, size, and thickness of certification labels, as well as the height or depth of the characters on those labels, and that these matters should be left up to the vehicle manufacturer, who should have freedom to adapt the labelling requirements to individual circumstances. Most comments further stated that there is no need to specify information other than what is currently required on certification labels. Most comments also recognized that there is a greater need for preserving a vehicle's VIN than the other information found on its certification label.

IV. Agency Decision

After reviewing these comments, NHTSA has decided to terminate rulemaking to require the standardized display of a permanent metal certification label for all motor vehicles weighing more than 4,536 kg (10,000 lb). In light of the comments, it is not clear that a significant problem exists with respect to the preservation of GVWR and VIN information on commercial vehicles. Even if such a problem did exist, the comments reveal that it may be attributed to the deliberate removal of certification labels by unscrupulous operators, or the inadvertent failure to install labels by final stage manufacturers, circumstances that would not be addressed by the proposed rule. Moreover, the comments reveal that it would be more costly for manufacturers to prepare and install metal certification labels in place of the labels in current use, and that metal labels may be more easily removable, potentially exacerbating the problems faced by law enforcement officers in attempting to ascertain a commercial vehicle's GVWR and VIN.

Issued on: June 19, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–15392 Filed 6–22–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 649, 650, and 651

[I.D. 061495A]

New England Fishery Management Council; Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will begin on Wednesday, June 28, 1995, at 10 a.m. and on Thursday, June 29, 1995, at 8:30 a.m.

ADDRESSES: The meeting will be held at the King's Grant Inn, Route 128 and Trask Lane, Danvers, MA 01923; telephone: (508) 774–6800. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01096–1097; telephone: (617) 231–0422.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, (617) 231–0422.

SUPPLEMENTARY INFORMATION: The June 28, 1995, session will begin with a Groundfish Committee report on the development of management alternatives for inclusion in Amendment 7 to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP). At this meeting, the Council will finalize proposals to address severely overfished groundfish stocks in the Northeast for public hearing purposes. The Council has identified this agenda item as the priority for this meeting. All other subjects will be addressed only after groundfish discussions are concluded.

If time allows, the following will be discussed at this meeting: Progress on the development of an FMP amendment to allow consolidation of fishing days now allocated to individual vessels in the Atlantic sea scallop fleet; approval of an American lobster stock rebuilding/effort reduction program for review at public hearings; details associated with the draft FMP for Monkfish, such as limited entry criteria, the basis for limited access fishery quotas and trip limits to control bycatch; work to date on an industry proposal to conduct a demonstration project involving sea scallop research, enhancement and aquaculture; and the current structure and role of the Council's advisory committees.

The Council also may hear reports from the Chairman, Council Executive Director, NMFS Regional Director, Northeast Fisheries Science Center liaison, Mid-Atlantic Fishery Management Council liaison, and representatives from the U.S. Coast Guard and the Atlantic States Marine Fisheries Commission.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Douglas G. Marshall (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: June 19, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–15459 Filed 6–22–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 121
Friday, June 23, 1995

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

Animal and Plant Health Inspection Service

[Docket No. 95–016–2]

Availability of Determination of Nonregulated Status for Genetically Engineered Tomato Lines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that tomato lines developed by Zeneca Plant Science and Petoseed Company, Inc., designated as B, Da, and F that have been genetically engineered for suppressed polygalacturonase enzyme activity are no longer considered regulated articles under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by Zeneca Plant Science and Petoseed Company, Inc., in their petition for a determination of nonregulated status, an analysis of other scientific data, and our review of comments received from the public in response to a previous notice announcing our receipt of the Zeneca Plant Science and Petoseed, Inc., petition. This notice also announces the availability of our written determination document and its associated environmental assessment and finding of no significant impact.

EFFECTIVE DATE: June 6, 1995.

ADDRESSES: The determination, an environmental assessment and finding of no significant impact, the petition, and all written comments received regarding the petition may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Subhash Gupta, Biotechnologist, Biotechnology Permits, BBEP, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. To obtain a copy of the determination or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–7612.

SUPPLEMENTARY INFORMATION:

Background

On February 7, 1995, the Animal and Plant Health Inspection Service (APHIS) received a petition (APHIS Petition No. 94–290–01p) from Zeneca Plant Science of Wilmington, DE, and Petoseed Company, Inc., of Woodland, CA, (Zeneca/Petoseed) seeking a determination that tomato lines designated as B, Da, and F that have been genetically engineered for suppressed polygalacturonase (PG) enzyme activity do not present a plant pest risk and, therefore, are not regulated articles under APHIS' regulations in 7 CFR part 340.

On March 17, 1995, APHIS published a notice in the **Federal Register** (60 FR 14413–14414, Docket No. 95–016–1) announcing receipt of the Zeneca/Petoseed petition and announcing that the petition was available for public review. The notice also discussed the role of APHIS and the Food and Drug Administration in regulating the subject tomato lines and food products derived from them. In the notice, APHIS solicited written comments from the public as to whether the subject tomato lines posed a plant pest risk. The comments were to have been received by APHIS on or before May 16, 1995.

APHIS received five comments on the Zeneca/Petoseed petition, from a food company, a seed company, and State departments of agriculture. All the commenters supported the Zeneca/Petoseed petition for nonregulated status for the subject tomato lines.

Analysis

Zeneca/Petoseed's tomato lines B, Da, and F have been developed from an unmodified proprietary inbred tomato line coded as T7, that has been genetically engineered to contain a fragment of the tomato PG gene in the sense or antisense orientation. Inhibition of the PG enzyme resulting from the transcription of the PG gene fragment results in an increased thickness of the tomato, which is a desired characteristic in processing tomatoes. The subject tomato lines also contain the bacterial neomycin phosphotransferase (*nptII*) gene that is used as a selectable marker. Tomato lines B, Da, and F were transformed through the use of disarmed vectors from a common soil-borne bacterium, the plant pathogen *Agrobacterium tumafaciens*. The subject tomato lines have been considered regulated articles under APHIS' regulations in 7 CFR part 340 because they contain certain gene sequences derived from plant-pathogenic sources. However, evaluation of field data reports from field tests of the subject tomato lines conducted under APHIS permits or notifications since 1991 indicate that there were no deleterious effects on plants, nontarget organisms, or the environment as a result of the subject tomato plants' release into the environment.

Determination

Based on its analysis of the data submitted by Zeneca/Petoseed and a review of other scientific data, comments received from the public, and field tests of the subject tomato lines, APHIS has determined that tomato lines B, Da, and F: (1) Exhibit no plant pathogenic properties; (2) are no more likely to become a weed than tomatoes with suppressed PG activity developed by traditional breeding techniques; (3) are unlikely to increase the weediness potential of any other cultivated plant or wild species with which they can interbreed; (4) are unlikely to harm other organisms, such as bees, which are beneficial to agriculture; and (5) should not cause damage to processed agricultural commodities.

The effect of this determination is that tomato lines designated as B, Da, and F are no longer considered regulated articles under APHIS' regulations in 7 CFR part 340. Therefore, the permit and notification requirements pertaining to regulated articles under those regulations no longer apply to the field testing, importation, or interstate movement of the subject tomato lines or their progeny. However, the importation of the subject tomato lines or seeds capable of propagation is still subject to

the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An environmental assessment (EA) has been prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that the subject tomato lines and lines developed from them are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and the FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 15th day of June 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–15379 Filed 6–22–95; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Rabbit and Sisters Timber Sales, Colville National Forest, Ferry County, Washington

AGENCY: Forest Service, USDA.

ACTION: Cancellation notice.

SUMMARY: The Forest Service, USDA, is no longer involved in the preparation of an environmental impact statement for the Rabbit and Sisters Timber Sales on the Kettle Falls Ranger District of the Colville National Forest. The Notice of Intent, published in the **Federal Register** on November 4, 1991 is hereby rescinded (56 FR 56356).

FOR FURTHER INFORMATION CONTACT: Ralph Egan, Planning Forester, 225 W. 11th Street, Kettle Falls, Washington 99141, or phone 509–738–6111.

Dated: June 9, 1995.

Tim Town,

Acting Forest Supervisor.

[FR Doc. 95–15389 Filed 6–22–95; 8:45 am]

BILLING CODE 3410–11–M

Eagle Rock and Granite Timber Sales, Colville National Forest, Ferry County, Washington

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: On November 6, 1990, the Forest Service, USDA, published a Notice of Intent (NOI) in the **Federal Register** (55 FR 46693). The notice stated that the proposed action was to harvest 5.0 million board feet (MMBF) of timber and construct 6.0 miles of roads in the Eagle Rock timber sale, and to harvest 5.0 MMBF of timber and construct 7.0 miles of road in the Granite timber sale. Both timber sales were within portions of the South Fork O'Brien Creek, Rabbit Creek, and South Fork Rabbit Creek drainages on the Republic Ranger District and were to be sold in Fiscal Year 1993.

This revised NOI changes the name of this project to ''Eagle Rock Ecosystem Restoration'' with the Proposed Action changed to timber harvesting and prescribed burning, in which we propose to restore portions of the area to a sustainable forest condition. Road construction and reconstruction is still included in the Proposed Action.

The location of the revised project is now within Thirteenmile Creek, Ninemile Creek (formerly called Rabbit Creek), McMann Creek, Camel Creek, and other unnamed smaller drainages flowing westerly into the Sanpoil River between the Colville Indian Reservation and the town of Republic, Washington. The South Fork O'Brien Creek drainage is no longer included.

The revised Proposed Action includes timber harvest and subsequent prescribed burning or thinning on approximately 2,520 acres, prescribed burning without timber harvest on approximately 3,360 acres, and approximately 7 miles of road construction and reconstruction. The timber harvest portion of the project, called Eagle Rock timber sale, is now proposed to sell in Fiscal Year 1996. Burning treatments are proposed to occur over a five year period beginning in 1996.

The draft environmental impact statement (EIS) will be tiered to the Forest Land and Resource Management Plan as amended by Regional Forester's Forest Plan Amendments for Eastside Forests, May 24, 1994 and June 12, 1995. The revised date of filing the draft EIS is October 1995 and the final EIS in February 1996.

DATES: Comments concerning the scope of the revised analysis should be received in writing by July 24, 1995.

ADDRESSES: Send written comments and suggestions concerning the proposed project to Patricia Egan, District Ranger, P.O. Box 468, Republic, Washington, 99166.

FOR FURTHER INFORMATION CONTACT: Questions should be directed to Pat Egan, Kristie Miller, or Jim Parker, Republic Ranger District, Colville National Forest; at P.O. Box 468, Republic, Washington, 99166 or telephone 509–775–3305.

Dated: June 9, 1995.

Tim Town,

Acting Forest Supervisor.

[FR Doc. 95–15388 Filed 6–22–95; 8:45 am]

BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyards Administration

Amendment to Certification of Central Filing System—Oklahoma

The Statewide central filing system of Oklahoma has been previously certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by the Oklahoma Secretary of State, for farm products produced in that State (52 FR 49056, December 29, 1987).

The certification is hereby amended on the basis of information submitted by Tom Cole, Secretary of State, for an additional farm product produced in that State as follows:

sesame

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.18(e)(3), 2.56(a)(3), 55 FR 22795.

Dated: June 19, 1995.

Calvin W. Watkins,

Deputy Administrator, Packers and Stockyards Programs.

[FR Doc. 95–15366 Filed 6–22–95; 8:45 am]

BILLING CODE 3410–KD–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Dakota Advisory Committee to the Commission will convene on Friday,

July 14, 1995, from 1 p.m. to 4 p.m., at the Rapid City Hilton Inn, Alex Johnson Hotel, Rapid City, South Dakota 57701. The purpose of the meeting is: (1) To provide orientation to new members; (2) to brief committee members on Commission activities; and (3) to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Jonathan Van Patten, 605–677–5361, or Ki-Taek Chun, Acting Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 16, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–15363 Filed 6–22–95; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

[Docket Number: 950124024–5157–02]

RIN 0660–AA04

National Telecommunications and Information Administration Telecommunications and Information Infrastructure Assistance Program (TIIAP)

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice of partial rescission of funds for fiscal year 1995.

SUMMARY: The National Telecommunications and Information Administration (NTIA) previously announced the availability of $64 million in funds for the Telecommunications and Information Infrastructure Assistance Program (TIIAP) to promote the widespread use of advanced telecommunications and information technologies in the public and non-profit sectors.[1] By providing targeted, matching demonstration and planning grants, TIIAP will help to develop a nationwide, interactive, multimedia information infrastructure that is accessible to citizens in rural as well as urban areas. A partial rescission of $15 million of the TIIAP funds, however, was recently enacted by Congress.

SUPPLEMENTAL INFORMATION: By **Federal Register** notice dated February 10, 1995, the NTIA, within the Department of Commerce, announced that Congress had appropriated $64 million for the TIIAP for FY 1995.[2] The grant funds ''may be used for the planning and construction of telecommunications networks for the provision of educational, cultural, health care, public information, public safety, or other social services.''[3]

Out of the $64 million originally appropriated for the TIIAP, $15 million was rescinded.[4] This partial rescission reduces the TIIAP budget to $49 million for FY 1995. Accordingly, the Notice of Availability is hereby modified to reflect this change.

Except for the partial rescission reducing the TIIAP funds to $49 million, the Program Categories, Evaluation Criteria, Selection Process, as well as all other information announced in the Notice of Availability remain in effect.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 95–15464 Filed 6–22–95; 8:45 am]

BILLING CODE 3510–60–P

[1] TIIAP; Notice of Availability of Funds, 60 Fed. Reg. 8156 (Feb. 10, 1995) [hereinafter Notice of Availability]

[2] *Id.* at 8160.

[3] Departments of Commerce, Justice, and the Judiciary, and Related Agencies Appropriations Act, 1995, Pub. L. No. 103–317, 108 Stat. 1724, 1747 (1994).

[4] Emergency Supplemental Appropriations and Rescissions for the Department of Defense to Preserve and Enhance the Military Readiness Act of 1995; Mexican Debt Disclosure Act of 1995, Pub. L. No. 104–6, 109 Stat. 73, 84 (1995).

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Colombia

June 16, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: June 27, 1995.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on April 21, 1995 (60 FR 19890) announces that, under Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Colombia with respect to cotton and man-made fiber underwear in Categories 352/652. The notice further states that if no solution is agreed upon in consultations between the two governments, the Committee for the Implementation of Textile Agreements may establish a limit at a level of not less than 1,509,880 dozen for the twelve-month period beginning on March 29, 1995 and extending through March 28, 1996.

Inasmuch as no agreement was reached during the consultation period on a mutually satisfactory solution, the United States Government has decided to control imports in Categories 352/652 for the period beginning on March 29, 1995 and extending through March 28, 1996 at a level of 1,509,880 dozen.

This action is taken in accordance with the Uruguay Round Agreement on Textiles and Clothing and the Uruguay Round Agreements Act now that Colombia is a member of the World Trade Organization.

The United States remains committed to finding a solution concerning Categories 352/652. Should such a solution be reached in consultations with the Government of Colombia, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see

Federal Register notice 59 FR 65531, published on December 20, 1994).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 16, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 23, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the Categories 352/652, produced or manufactured in Colombia and exported during the period beginning on March 29, 1995 and extending through March 28, 1996, in excess of 1,509,880 dozen [1].

Textile products in Categories 352/652, which have been exported to the United States prior to March 29, 1995 shall not be subject to this directive.

Textile products in Categories 352/652 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

Import charges will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–15332 Filed 6–22–95; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after March 28, 1995.

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

June 16, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: June 23, 1995.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on April 21, 1995 (60 FR 19891) announces that if no solution is agreed upon in consultations between the Governments of the United States and Costa Rica on Categories 352/652, the Committee for the Implementation of Textile Agreements may establish a limit at a level of not less than 14,423,178 dozen for the twelve-month period beginning on March 27, 1995 and extending through March 26, 1996.

Inasmuch as no agreement was reached during the consultation period on a mutually satisfactory solution, the United States Government has decided to control imports in Categories 352/652 for the period beginning on March 27, 1995 and extending through March 26, 1996 at a level of 14,423,178 dozen.

This action is taken in accordance with the Uruguay Round Agreement on Textiles and Clothing and the Uruguay Round Agreements Act.

The United States remains committed to finding a solution concerning Categories 352/652. Should such a solution be reached in consultations with the Government of Costa Rica, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 16, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 23, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the Categories 352/652, produced or manufactured in Costa Rica and exported during the period beginning on March 27, 1995 and extending through March 26, 1996, in excess of 14,423,178 dozen [1].

Textile products in Categories 352/652, which have been exported to the United States prior to March 27, 1995 shall not be subject to this directive.

Textile products in Categories 352/652 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

Import charges will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–15333 Filed 6–22–95; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after March 26, 1995.

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

June 16, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: June 23, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on April 21, 1995 (60 FR 19891) announces that if no solution is agreed upon in consultations between the Governments of the United States and the Dominican Republic on Categories 352/652, the Committee for the Implementation of Textile Agreements may establish a limit at a level of not less than 16,442,148 dozen for the twelve-month period beginning on March 27, 1995 and extending through March 26, 1996.

Inasmuch as no agreement was reached during the consultation period on a mutually satisfactory solution, the United States Government has decided to control imports in Categories 352/652 for the period beginning on March 27, 1995 and extending through March 26, 1996 at a level of 16,442,148 dozen.

This action is taken in accordance with the Uruguay Round Agreement on Textiles and Clothing and the Uruguay Round Agreements Act.

The United States remains committed to finding a solution concerning Categories 352/652. Should such a solution be reached in consultations with the Government of the Dominican Republic, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 16, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 23, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the Categories 352/652, produced or manufactured in the Dominican Republic and exported during the period beginning on March 27, 1995 and extending through March 26, 1996, in excess of 16,442,148 dozen [1].

Textile products in Categories 352/652 which have been exported to the United States prior to March 27, 1995 shall not be subject to this directive.

Textile products in Categories 352/652 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

Import charges will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–15335 Filed 6–22–95; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after March 26, 1995.

Establishment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

June 16, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: June 23, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on April 21, 1995 (60 FR 19892) announces that if no solution is agreed upon in consultations between the Governments of the United States and El Salvador on Categories 351/651 and 352/652, the Committee for the Implementation of Textile Agreements may establish a limit at levels of not less than 259,914 dozen (Categories 351/651) and 3,687,034 dozen (Categories 352/652) for the period beginning on March 27, 1995 and extending through March 26, 1996.

Inasmuch as no agreement was reached during the consultation period on a mutually satisfactory solution on Categories 351/651 and 352/652, the United States Government has decided to control imports in these categories for the period beginning on March 27, 1995 and extending through March 26, 1996, at levels of 259,914 dozen (Categories 351/651) and 3,687,034 dozen (Categories 352/652).

This action is taken in accordance with the Uruguay Round Agreement on Textiles and Clothing and the Uruguay Round Agreements Act.

The United States remains committed to finding a solution concerning Categories 351/651 and 352/652. Should such a solution be reached in consultations with the Government of El Salvador, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see

Federal Register notice 59 FR 65531, published on December 20, 1994).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 16, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 23, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in El Salvador and exported during the period beginning on March 27, 1995 and extending through March 26, 1996, in excess of the following levels of restraint:

Category	New limit [1]
351/651	259,914 dozen.
352/652	3,687,034 dozen.

[1] The limits have not been adjusted to account for any imports exported after March 26, 1995.

Textile products in Categories 351/651 and 352/652 which have been exported to the United States prior to March 27, 1995 shall not be subject to the limits established in this directive.

Textile products in Categories 351/651 and 352/652 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

Import charges will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–15336 Filed 6–22–95; 8:45 am]

BILLING CODE 3510–DR–F

Establishment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Honduras

June 16, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: June 23, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on April 21, 1995 (60 FR 19893) announces that if no solution is agreed upon in consultations between the Governments of the United States and Honduras on Categories 351/651 and 352/652, the Committee for the Implementation of Textile Agreements may establish a limit at levels of not less than 157,990 dozen (Categories 351/651) and 6,550,810 (Categories 352/652) for the twelve-month period beginning on March 27, 1995 and extending through March 26, 1996.

Inasmuch as no agreement was reached during the consultation period on a mutually satisfactory solution, the United States Government has decided to control imports in Categories 351/651 and 352/652 for the period beginning on March 27, 1995 and extending through March 26, 1996 at levels of 157,990 dozen (Categories 351/651) and 6,550,810 dozen (Categories 352/652).

This action is taken in accordance with the Uruguay Round Agreement on Textiles and Clothing and the Uruguay Round Agreements Act.

The United States remains committed to finding a solution concerning Categories 351/651 and 352/652. Should such a solution be reached in consultations with the Government of Honduras, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 16, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 23, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Honduras and exported during the period beginning on March 27, 1995 and extending through March 26, 1996, in excess of the following limits:

Category	New limit [1]
351/651	157,990 dozen.
352/652	6,550,810 dozen.

[1] The limits have not been adjusted to account for any imports exported after March 26, 1995.

Textile products in Categories 351/651 and 352/652 which have been exported to the United States prior to March 27, 1995 shall not be subject to this directive.

Textile products in Categories 351/651 and 352/652 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

Import charges will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–15330 Filed 6–22–95; 8:45 am]

BILLING CODE 3510–DR–F

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

June 16, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: June 26, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on April 21, 1995 (60 FR 19891) announces that if no solution is agreed upon in consultations between the Governments of the United States and Thailand on Categories 352/652, the Committee for the Implementation of Textile Agreements may establish a limit at a level of not less than 1,586,005 dozen for the twelve-month period beginning on March 29, 1995 and extending through March 28, 1996.

Inasmuch as no agreement was reached during the consultation period on a mutually satisfactory solution, the United States Government has decided to control imports in Categories 352/652 for the prorated period beginning on March 29, 1995 and extending through December 31, 1995 at a level of 1,207,971 dozen. Categories 352/652 shall remain subject to the Group II limit and shall be charged at a rate of 9.4 square meters equivalent per dozen.

This action is taken in accordance with the Uruguay Round Agreement on Textiles and Clothing and the Uruguay Round Agreements Act.

The United States remains committed to finding a solution concerning Categories 352/652. Should such a solution be reached in consultations with the Government of Thailand, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Edwin Maddrey III,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 16, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on June 26, 1995, you are directed, pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, to establish a limit at 1,207,971 dozen [1] for textile products in Categories 352/652, produced or manufactured in Thailand and exported during the period beginning on March 29, 1995 and extending through December 31, 1995.

Textile products in Categories 352/652 shall remain subject to the Group II limit established in the directive dated March 30, 1995 for the period January 1, 1995 through December 31, 1995. The conversion factor for converting merged Categories 352/652 to square meters equivalent is 9.4.

Textile products in Categories 352 and 652 which have been exported to the United States prior to March 29, 1995 shall not be subject to the limit established in this directive.

Import charges will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Edwin Maddrey III,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–15329 Filed 6–22–95; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after March 28, 1995.

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

June 16, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: June 23, 1995.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on April 21, 1995 (60 FR 19891) announces that if no solution is agreed upon in consultations between the Governments of the United States and Turkey on Categories 352/652, the Committee for the Implementation of Textile Agreements may establish a limit at a level of not less than 1,291,118 dozen for the twelve-month period beginning on March 28, 1995 and extending through March 27, 1996.

Inasmuch as no agreement was reached during the consultation period on a mutually satisfactory solution, the United States Government has decided to control imports in Categories 352/652 for the period beginning on March 28, 1995 and extending through March 27, 1996 at a level of 1,291,118 dozen.

This action is taken in accordance with the Uruguay Round Agreement on Textiles and Clothing and the Uruguay Round Agreements Act.

The United States remains committed to finding a solution concerning Categories 352/652. Should such a solution be reached in consultations with the Government of Turkey, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff

Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 16, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 23, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the Categories 352/652, produced or manufactured in Turkey and exported during the period beginning on March 28, 1995 and extending through March 27, 1996, in excess of 1,291,118 dozen [1].

Textile products in Categories 352/652, which have been exported to the United States prior to March 28, 1995 shall not be subject to this directive.

Textile products in Categories 352/652 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

Import charges will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–15331 Filed 6–22–95; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after March 27, 1995.

Request for Public Comments on Bilateral Textile Consultations on Women's and Girls' Wool Suits

June 19, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Anne Novak (Colombia) and Janet Heinzen (the Philippines), International Trade Specialists, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Under the terms of Article 6 of the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the Government of the United States requested consultations with the Governments of Colombia and the Philippines with respect to women's and girls' wool suits in Category 444.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Governments of Colombia and the Philippines, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of wool textile products in Category 444, produced or manufactured in Colombia and the Philippines and exported during the twelve-month period beginning on May 31, 1995 and extending through May 30, 1996, at levels of not less than 132,420 numbers (Colombia) and 74,874 numbers (the Philippines).

A statement of serious damage concerning Category 444 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 444, or to comment on domestic production or availability of products included in Category 444, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Governments of Colombia and the Philippines.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute ''a foreign affairs function of the United States.''

The United States remains committed to finding a solution concerning Category 444. Should such a solution be reached in consultations with the Governments of Colombia and the Philippines further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Statement of Serious Damage

Women's and Girls' Wool Suits—Category 444

May 1995

The sharp and substantial increase in imports of women's and girls' wool suits, Category 444, is causing serious damage to the U.S. industry producing women's and girls' wool suits.

Category 444 imports increased to 1,125,392 units in the year ending February 1995, 7 percent above the year ending February 1994 level, and 19 percent above the level imported in calendar year 1992.

Serious damage to the domestic industry resulting from the sharp and substantial increase in imports of women's and girls' wool suits is attributed to Colombia and Philippines. The combination of high import levels, surging imports, and low priced goods from these countries have resulted in loss of domestic output, market share, employment, man-hours worked, and total annual wages.

Total imports from these two countries increased from 186,271 units in the year ending February 1994 to 207,294 units in the twelve months ending in February 1995, a sharp and substantial increase of 11 percent. Together their year ending February 1995 imports were 18.5 percent of total Category 444 imports into the U.S during the year ending February 1995,

and were 3.6 percent of total U.S. production of women's and girls' wool suits in 1994.

[FR Doc.95–15386 Filed 6–22–95; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 24, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 14, 1994, February 10, April 28, and May 5, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 F.R. 52145, 60 F.R. 7944, 20971, 22372) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the 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 services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Administrative Services, Department of Veterans Affairs Medical Center, 1500 East Woodrow Wilson Drive, Jackson, Mississippi

Commissary Shelf Stocking, Custodial and Warehousing, Naval Station Everett, Smoky Point Commissary, Marysville, Washington

Dispatcher, Department of Veterans Affairs Medical Center, 7305 N. Military Trail, West Palm Beach, Florida

Facilities Services Support, Missoula Fire Technology Center, (excluding International Fire Sciences Laboratory), Highway 10, Missoula, Montana

Grounds Maintenance, Department of the Army, Television and Audio Support Activities, Mather Air Force Base, California

Janitorial/Custodial, Eisenhower Hall, Fort Leavenworth, Kansas

Janitorial/Custodial, Department of Veterans Affairs Medical Center, Omaha, Nebraska

Operation of Postal Service Center, Department of the Air Force, Hurlburt Field, Florida

Recycling Service, Department of Veterans Affairs Medical Center, 1500 East Woodrow Wilson Drive, Jackson, Mississippi

Scrap Breakdown, Defense Reutilization and Marketing Office, Kelly Air Force Base, Texas.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–15449 Filed 6–22–95; 8:45 am]

BILLING CODE 6820–33–P

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: July 24, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

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 does not appear to have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service 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 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

Dog Repellent
6840–01–000–9316
NPA: Lighthouse for the Blind, St. Louis, Missouri at its facility in Berkeley, Missouri

Cleaning Compound, Aircraft Surface
6850–00–005–5305
NPA: Lighthouse for the Blind, St. Louis, Missouri at its facility in Berkeley, Missouri

Organizer, Day Planner, Travel Size
7530–00–D16–0057 (Burgundy)
(Requirements for the Defense Supply Service, Washington, DC)

NPA: Easter Seal Society of Western Pennsylvania, Pittsburgh, Pennsylvania

Service

Grounds Maintenance
Presidio of San Francisco Commissary
San Francisco, California
NPA: Rubicon Programs, Inc.
Richmond, California

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–15450 Filed 6–22–95; 8:45 am]

BILLING CODE 6820–33–P

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: July 24, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

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 will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity 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

Undershirt, Man's, Brown
8420–01–112–1476
8420–01–112–1477
NPA: Mississippi Industries for the Blind, Jackson, Mississippi
BESB Industries,
West Hartford, Connecticut

Services

Food Service Attendant
Naval Air Station
Cecil Field, Florida,
NPA: Goodwill Industries of Central Florida, Orlando, Florida

Janitorial/Grounds Maintenance
Bureau of Engraving and Printing
Fort Worth, Texas
NPA: Development Resources, Inc., San Antonio, Texas

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–15451 Filed 6–22–95; 8:45 am]

BILLING CODE 6820–33–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Educational Awards to Governor-sponsored National and Community Service Programs

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of educational awards.

SUMMARY: The Corporation for National Service (the Corporation) announces the availability of up to 1,500 educational awards from the National Service Trust, for national and community service programs sponsored by Governors. The Corporation will only provide these educational awards to programs that can support participant and programs costs through sources other than the Corporation; that meet AmeriCorps program requirements; and that are judged to be high quality according to Corporation criteria, as set forth in the application materials. Educational awards-only programs will not count against a State's maximum number of allowable competitive programs.

DATES: Applications may be obtained on or after July 7, 1995. Applications will be evaluated, and decisions made, on a rolling basis in the order in which they are received. The number of applications approved is subject to the availability of funds.

ADDRESSES: Applications may be obtained from and must be submitted to the Corporation at the following address: Corporation for National Service, 1201 New York Avenue NW., Washington, D.C. 20525. This notice may be requested in an alternative format for the visually impaired.

FOR FURTHER INFORMATION CONTACT: For further information and to obtain applications, contact the Corporation for National Service at (202) 606–5000, ext. 474.

SUPPLEMENTARY INFORMATION:

Background

The Corporation is a federal government corporation that engages Americans of all ages and backgrounds in community-based service. This service addresses the nation's educational, public safety, human, and environmental needs to achieve direct and demonstrable results. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service.

Pursuant to the National and Community Service Act of 1990, as amended, 42 U.S.C. 12501, et seq. (the Act), the Corporation may ''support innovative and model programs, including * * * programs sponsored by governors.'' 42 U.S.C. 12653(b)(5). In addition, an individual can receive an educational award from the National Service Trust if, among other things, the individual ''successfully completes the required term of service * * * in an approved national service position.'' 42 U.S.C. 12602. The Act defines an approved national service position to include six specific service positions and ''such other national service positions as the Corporation considers to be appropriate.'' 42 U.S.C. 12573.

Because the Corporation's statutory authority for sponsoring these ''innovative and model'' programs is found in Subtitle H of the Act, rather than Subtitle C, some of the AmeriCorps program requirements found in Subtitle C may not necessarily apply to these programs. However, the Corporation has determined that to maintain the

integrity of the AmeriCorps national service network, these Governor-sponsored programs should in fact be as similar as possible to traditional AmeriCorps programs. Accordingly, the following AmeriCorps program requirements (which are discussed in greater detail in the application) will apply to these programs. Other program, grant, and administrative requirements will be set forth in the application materials.

Program Eligibility and Design

The Corporation will accept applications from a state Governor proposing to sponsor a national service program in his or her state that addresses the unmet education, public safety, human, or environmental needs in the community served, and provides a direct and demonstrable benefit that is valued by the community. The Corporation is looking for high-quality programs that (1) are ''getting things done'' in communities, (2) strengthen communities, and (3) develop participants. For this educational awards-only initiative, the Corporation seeks to support programs that are innovative and that can support all program and participant costs (other than educational awards) through sources other than the Corporation.

By ''getting things done'', programs will help their communities meet education, public safety, human or environmental needs through direct and demonstrable service. Programs must be large enough to achieve a demonstrable impact on the community served. Accordingly, the Corporation encourages programs to enroll at least 20 full-time participants, regardless of whether they are placed individually or in teams.

To strengthen communities, programs should engage a full range of local partners to build a self-sustaining commitment to service. To this end, service projects should be designed, implemented, and evaluated with extensive and broad-based local input, such as consultation with representatives of the community served; appropriate community-based agencies; foundations; businesses; local labor organizations representing employees of service sponsors; and local government.

To develop participants, programs should provide appropriate training, education, supervision, and support, and emphasize the ethic and skills needed for productive, active citizenship.

To help promote a national identity for all AmeriCorps programs and Members, programs must agree to identify the program and its Members as part of the Corporation's larger national effort and to participate in activities designed to promote national identity.

The Corporation intends to monitor programs supported through this program to the same extent that it oversees its other programs. Programs will be required to cooperate with the Corporation and its evaluators in all its monitoring and evaluation efforts.

Participant Recruitment, Development and Benefits

Programs must select their participants in a non-partisan, non-political, and non-discriminatory manner. Programs are encouraged to recruit participants who possess leadership potential and a commitment to the goals of national service, regardless of the participant's educational level, work experience, or economic background. In recruiting and placing their participants, programs must not displace any employee or position, or otherwise violate the nondisplacement provisions of the Corporation's regulations, which are published at 45 CFR 2540.100(f). In addition, programs should strive to build strong communities by engaging diverse participants and staff in service activities and encouraging mutual understanding and cooperation. Programs must actively seek to include participants and staff from the communities in which projects are conducted, as well as individuals of different races and ethnicities, education levels, socioeconomic backgrounds, both men and women, and individuals with physical and cognitive disabilities.

Programs must provide participants with the training, skills, and knowledge necessary to perform the tasks required in their respective projects. In addition, programs must provide support services that help participants: (1) who are completing a term of service to make the transition to other educational and career opportunities; and (2) who have not completed their secondary education to earn the equivalent of a high school diploma.

Programs must provide full-time participants with a living allowance of between $7,945 and $15,890 per year. Programs are not required to provide a living allowance to part-time participants, but if they choose to do so, then the living allowance should be prorated according to the number of hours of service per year. Programs that were in existence prior to the signing into law of the National and Community Service Trust Act of 1993 (September 21, 1993) are not required to provide a living allowance to their participants. Such programs that choose to offer a living allowance, however, are exempt from the minimum requirement but not from the maximum requirement (for example, they may offer a living allowance of between $0 and $15,890).

Programs must provide each full-time participant with basic health care coverage if he or she is not otherwise covered by a health care policy that provides certain minimum benefits at the time he or she is accepted into the program. Finally, programs must provide reasonable accommodation, including auxiliary aids and services based on the individualized need of a participant who is a qualified individual with a disability.

Eligibility for the Educational Award

Participants who successfully complete full-time or part-time terms of service are eligible for educational awards for each of up to two terms of service. Full-time participants must serve at least 1700 hours during a period of not less than 9 months and not more than a year. Part-time participants must serve at least 900 hours during a period of not more than two years, except if the part-time participant is enrolled in an institution of higher education while performing some or all of the service, then the individual must perform at least 900 hours of service during a period of not more than three years. Full-time educational awards are $4725 and part-time educational awards are $2362.50.

Prohibited Service

Prohibited activities may not be performed by participants in the course of their duties, at the request of program staff, or in a manner that would associate the activities with the national service program or the Corporation. These activities include:

(1) any effort to influence legislation, as prohibited under section 501(c) of the Internal Revenue Code of 1986 (26 U.S.C. 501);

(2) organizing protests, petitions, boycotts, or strikes;

(3) assisting, promoting, or deterring union organizing;

(4) impairing existing contracts for services or collective bargaining agreements;

(5) engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;

(6) engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious educational or worship, constructing or

operating facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization; and

(7) providing a direct benefit to (a) a business organized for profit, (b) a labor union, (c) a partisan political organization, (d) a nonprofit organization that fails to comply with the restrictions contained in section 501(c) of the Internal Revenue Code of 1986, or (e) an organization engaged in the religious activities described in paragraph (6) above, unless Corporation assistance is not used to support those religious activities.

Eligible Applicants

Governors may apply on behalf of the following eligible entities: non-profit organizations, states, subdivisions of states, institutions of higher education. Governors are strongly encouraged to consult with and utilize the assistance of their State Commissions (or Alternative Administrative Entities.)

Extent and Duration of Program Is Subject to the Availability of Funds

The number of educational awards provided to approved programs and the duration of the Governor-sponsored national service programs are subject to the availability of appropriated funds.

Dated: June 20, 1995.

Terry Russell,

General Counsel, Corporation for National Service.

[FR Doc. 95–15461 Filed 6–22–95; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Joint Technology Issues

ACTION: Change in date of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Joint Technology Issues scheduled for May 30 and June 29, 1995, as published in the **Federal Register** (Vol. 60, No. 96, Page 26722, Thursday, May 18, 1995, FR Doc. 95–12243) will be held on June 26 and July 14, 1995. In all other respects the original notice remains unchanged.

Dated: June 19, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–15353 Filed 6–22–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board 1995 Summer Study Task Force on Technology Investments for 21st Century Military Superiority, Industrial Base Team

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board 1995 Summer Study Task Force on Technology Investments for 21st Century Military Superiority, Industrial Base Team will meet in closed session on July 20–21, 1995 at Science Applications International Corporation, McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense (Acquisition and Technology) on research, scientific, technical, and manufacturing matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will focus on those R&D investments that must be made now so as to assure a technology base in the year 2000 capable of providing U.S. military superiority in the 21st century.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(4) (1988), and that accordingly this meeting will be closed to the public.

Dated: June 19, 1995.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–15354 Filed 6–22–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Extension of the Public Comment Period for the Draft Environmental Impact Statement on a Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel

AGENCY: Department of Energy.

ACTION: Extension of the public comment period.

SUMMARY: The Department of Energy is extending the public comment period through July 20, 1995, for the draft Environmental Impact Statement (EIS) on a Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel. All comments received by that date will be considered by the Department in the preparation of the final EIS. Comments received after the close of the comment period will be considered to the extent practicable. The Department had earlier announced (60 FR 19899, April 21, 1995) that the comment period would end on June 20, 1995. Comments can be mailed to Mr. Charles Head, Office of Spent Fuel Management, EM–37, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, D.C. 20585–0001. For more information on the draft EIS please call 1–800–736–3282.

Issued in Washington, D.C. on June 20, 1995.

Mark W. Frei,

Acting Special Associate Deputy Assistant Secretary for Waste Management, Environmental Management.

[FR Doc. 95–15540 Filed 6–22–95; 8:45 am]

BILLING CODE 6450–01–P

Amended Notice of Intent to Prepare an Environmental Impact Statement for the Continued Operation of the Pantex Plant and Associated Storage of Nuclear Weapon Components

AGENCY: Department of Energy.

ACTION: Amended Notice of Intent.

SUMMARY: The Department of Energy (DOE) issued a Notice of Intent for the preparation of a site-wide Environmental Impact Statement (EIS) for the Continued Operation of the Pantex Plant and Associated Storage of Nuclear Weapon Components (59 FR 26635, May 23, 1994). In that notice, alternatives involving the potential relocation of selected Pantex Plant operations to other sites were not fully defined. DOE published an EIS Implementation Plan (DOE/EIS–0225–IP, December 1994) which defined the proposed scope of the EIS and the process of identifying potential alternate sites. DOE has now identified the potential reasonable alternate sites for relocation of selected Pantex Plant operations which will be analyzed in the EIS, and is issuing this amended Notice of Intent to announce these modifications to the scope of the EIS and to solicit public comments regarding these changes.

DATES: DOE invites the general public, other government agencies, and all other interested parties to comment on the amended scope and content of this EIS. DOE is soliciting additional oral and written comments, suggestions, requests for information, and requests for public meetings no later than July 24, 1995. These comments will receive equal consideration to comments presented during the June 1994 scoping period.

Oral Comments

All interested parties are invited to record their comments, suggestions, and requests concerning this EIS by calling the Pantex Plant EIS Hotline at 1–800–788–0306. The Hotline will give instructions on how to record your comments.

Written Comments

Written comments to assist DOE in identifying significant environmental issues and the appropriate scope of this EIS, questions concerning the Pantex Plant or the other sites involved, requests to be placed on the Pantex Plant EIS mailing list, requests for copies of the Implementation Plan, requests to be placed on the EIS distribution list, and requests for public meetings should be directed to: Ms. Nanette Founds, U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, New Mexico 87185–5400.

Written comments, suggestions, and requests can be submitted using the Pantex Plant EIS Faxline at 1–800–822–5499. Facsimiles should be marked: Pantex Plant EIS.

FOR FURTHER INFORMATION CONTACT: For information on DOE's NEPA process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202–586–4600 or 1–800–472–2756.

ADDRESSES: In addition to those locations listed in the original Notice of Intent, copies of all written comments, transcripts of all oral comments, and copies of the Implementation Plan will be prepared and retained by DOE for inspection by the public at the following additional locations:

Pantex SWEIS Public Information Center, c/o Tetra Tech, Inc., 6900 I–40 West, Suite 260, Amarillo, Texas 79106, 806–355–9480

U.S. Department of Energy, Public Reading Room, Washington State University, 100 Sprout Road, Richland, WA 99352, 509–376–8583

SUPPLEMENTARY INFORMATION:

Program Changes

The Implementation Plan (Plan) summarized the comments received during scoping in June 1994, described the scope of the EIS, the alternatives that were planned to be evaluated, and the methodology for preparing the EIS. After publication of the Plan in December 1994, the proposed action and alternatives for relocating some of the Pantex Plant operations were modified. These modifications are described below:

Relocating Pantex Plant Weapons Operations: In the Plan, DOE proposed to analyze the impacts of relocating some or all of the Pantex Plant operations to one or more sites. The Nevada Test Site was identified as the only alternate site for relocation of Pantex operations involving disassembly, modification, maintenance, or quality assurance of nuclear weapons components. Since the publication of the Plan, DOE has begun planning a

Stockpile Stewardship and Management Programmatic EIS (60 FR 31291, June 14, 1995) that will address the nuclear weapons complex requirements in the year 2005 and beyond. One of the anticipated alternatives of this Programmatic EIS is the possible relocation of the Pantex nuclear weapons operations to another site. Any decision on relocation of Pantex nuclear weapons operations will be made in the Record of Decision for the

Stockpile Stewardship and Management Programmatic EIS and not the Pantex site-wide EIS. Therefore, the Pantex site-wide EIS will not examine the impacts at any other site of relocating the Pantex nuclear weapons operations to that site. However, for completeness of analysis, the Pantex site-wide EIS will evaluate the impacts *at Pantex* of relocating these operations to another site. (See Implementation Plan, Section 3.2.3, Option A.)

Relocating Plutonium Pits Interim Storage Operations: The Pantex site-wide EIS will analyze alternatives to the interim storage of plutonium pits from disassembled weapons at Pantex pending decisions on their disposition. Initially, DOE identified four DOE sites as potential alternate pit storage locations pending future site identification activities. These were: The Nevada Test Site; The Savannah River Site in South Carolina; the Oak Ridge Reservation in Tennessee; and the Los Alamos National Laboratory in New Mexico. Based on further examination of more than 70 DOE and Department of Defense (DOD) sites, DOE has modified the list of alternative sites for relocating interim storage of plutonium pits. The Pantex site-wide EIS will now analyze relocating interim pit storage from Pantex to each of the following candidate sites: the Nevada Test Site; the Hanford Reservation, the Savannah River Site, and DOD's Manzano Facility at Kirtland Air Force Base in New Mexico. The Oak Ridge Reservation and the Los Alamos National Laboratory have been eliminated as reasonable interim pit storage sites due to inadequate storage space.

Analysis of Storage of Depleted Uranium: DOE currently ships depleted uranium components from disassembled weapons to the Oak Ridge Reservation for routine processing and storage. The Plan identified four alternate sites for interim storage of depleted uranium components (See Implementation Plan, Section 3.2.3., Option B–3). However, DOE has determined that there are currently no reasonable alternative sites for the receipt of depleted uranium from disassembled weapons in the 5 to 10 year period covered by the Pantex Site-Wide EIS because of the lack of facilities to perform the routine processing (demilitarization or recycling) of this material at any site other than the Oak Ridge Reservation. Therefore, the processing and storage of depleted uranium will not be addressed in the Pantex site-wide EIS.

Potential New Missions: Pantex has been identified as a reasonable alternative location for actions being analyzed in other DOE EISs. Pantex is one of the reasonable alternatives for the proposed new tritium facility in the *Tritium Supply and Recycling Programmatic EIS* (60 FR 14433, March 17, 1995). Pantex is also under consideration for long-term plutonium component storage in the *Long-Term Storage and Disposition of Weapons-Usable Fissile Materials Programmatic EIS* (59 FR 31985, June 21, 1994). In addition, Pantex may be identified as an alternative for other defense missions during preparation of the *Stockpile Stewardship and Management Programmatic EIS*. The Pantex site-wide EIS will consider the potential receipt of such new activities in its cumulative impact analysis; however, decisions on where to locate these new missions will be made on the basis of the programmatic EISs, and not on the basis of the Pantex site-wide EIS.

Subsequent Document Preparation

After the completion of this additional public scoping process, DOE will prepare an addendum to the Implementation Plan and make it available in the public reading rooms. The addendum will record the results of the additional comment period. DOE intends to complete the draft EIS in December 1995 and will announce its availability in the **Federal Register**. DOE will solicit comments from the public, organizations, and other agencies on the draft EIS, and will consider all comments in its preparation of the final EIS.

Issued in Washington, DC, on June 19, 1995.

Tara O'Toole,

Assistant Secretary Environment, Safety and Health.

[FR Doc. 95–15469 Filed 6–22–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Nevada Test Site

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), Fernald.

DATES: Saturday, July 8, 1995: 8:30 p.m.—12:30 p.m. (public comment session, 11:45 a.m.—12:00 p.m.)

ADDRESSES: The Joint Information Center, 6025 Dixie Highway, Route 4 Fairfield, Ohio.

FOR FURTHER INFORMATION CONTACT: John S. Applegate, Chair of the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061, or call the Fernald Citizens Task Force message line (513) 648–6478.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the Fernald site.

Tentative Agenda

Saturday, July 8, 1995

Final Report Approval

8:30 p.m. Task Force Administration, (Call to order, Approval of Minutes, Chair's Remarks)
8:50 a.m. Identification of Key Comments and Issues, Walk-through Final Report
10:00 a.m. Break
10:15 a.m. Resolution of Key Comments and Issues
11:45 a.m. Opportunity for Public Input
12:00 p.m. Approval of Draft Final Report
12:15 p.m. Wrap Up
12:30 p.m. Adjourn

A final agenda will be available at the meeting, Saturday, July 8, 1995.

Public Participation

The meeting is open to the public. Written statements may be filed with the Task Force chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Task Force chair at the address or telephone number listed above. 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, Kenneth Morgan, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

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 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to John S. Applegate, Chair, the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061 or by calling the Task Force message line at (513) 648–6478.

Issued at Washington, DC on June 20, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–15467 Filed 6–22–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Nevada Test Site.

DATES: Wednesday, July 5, 1995: 5:30 p.m.–9:30 p.m.

ADDRESSES: Community College of Southern Nevada, Cheyenne Campus, Highdesert Conference and Training Center, Room 1422, Las Vegas, NV.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. DOE, Nevada Operations Office, AMEM, P.O. Box 98518, Las Vegas, NV 89193–8518, ph. 702–295–0197 fax 702–295–1810.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The EM SSAB provides input and recommendations to the Department of Energy on Environmental Management Strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda:

Wednesday, July 5, 1995

5:30 p.m.
- Call to Order
- Review Agenda
- Minutes Acceptance
- Financial Report
- Correspondence
- Reports from Committees, Delegates and Representatives
- Unfinished Business
- New Business
- Evaluation of Board and Environmental Restoration and Waste Management Programs
- Announcements

9:30 p.m.
- Adjournment

If needed, time will be allotted after public comments for old business, new business, items added to the agenda, and administrative details.

A final agenda will be available at the meeting, Saturday, July 8, 1995.

Public Participation: The meeting is open to the public. Written statements may be filed with the Task Force chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Task Force chair at the address or telephone number listed above. 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, Kenneth Morgan, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

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 4:00 p.m., Monday-Friday, except Federal holidays.

Issued at Washington, DC on June 20, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–15466 Filed 6–22–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP95–563–000]

Florida Gas Transmission Company; Request Under Blanket Authorization

June 19, 1995.

Take notice that on June 15, 1995, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed a prior notice request with the Commission in Docket No. CP95–563–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a new delivery point and realign natural gas volumes at another delivery point under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

FGT proposes to construct and operate a delivery point and meter station on its existing West Leg pipeline in Pasco County, Florida, to serve Peoples Gas System, Inc. (Peoples) with firm and interruptible transportation service pursuant to FGT's FERC Rate Schedules FTS–1 and PTS–1, respectively. FGT also proposes to realign Maximum Daily Transportation Quantities (under Rate Schedule FTS–1) of 2,897 MMBtu to the proposed delivery point from FGT's Eustis Division for the months of October to April, and 370 MMBtu from May to September. FGT states that Peoples would reimburse FGT for the $151,000 estimated construction cost of the new delivery point.

FGT states that its tariff allows additional delivery points and realignment of natural gas volumes. FGT also states that its gas deliveries to Peoples would remain within the currently certificated limits and have no disadvantageous impact on FGT's other existing customers.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15371 Filed 6–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1049–000]

Gateway Energy, Inc.; Notice of Filing

June 19, 1995.

Take notice that on June 12, 1995, Gateway Energy, Inc. tendered for filing an amendment to its May 15, 1995, filing in the above-referenced docket.

Any person desiring to be heard or to protects said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 30, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15374 Filed 6–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ID–2907–000]

General H. Norman Schwarzkopf; Notice of Filing

June 19, 1995

Take notice that on May 25, 1995, General H. Norman Schwarzkopf (Applicant) tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions:

Director
The Washington Water Power Company
Director
Kuhlman Corporation

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 30, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15377 Filed 6–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–559–000]

Northern Natural Gas Company; Application to Abandon Service

June 19, 1995.

Take notice that on June 14, 1995, Northern Natural Gas Company (Applicant), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP95–559–000 under Section 7(b) of the Natural Gas Act and Section 9 of the Alaska Natural Gas Transportation Act, for authority to abandon service to Pan-Alberta (U.S.) Inc., under an individually certificated exchange agreement. The parties mutually agree to the termination of an exchange agreement for up to 75,000 Mcf/d.

Any person desiring to be heard or make any protest with reference to said application should on or before July 10, 1995, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is

filed within the time required, or if the Commission on its own review of the matter finds that permission and approval of the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advise, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15373 Filed 6–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1146–000]

PacifiCorp; Notice of Filing

June 19, 1995.

Take notice that on June 1, 1995, Portland General Electric Company (PGE) tendered for filing a Certificate of Concurrence to PacifiCorp's filing relating to Amendatory Agreement No. 4 executed by the parties as of May 5, 1995, to the Pacific Northwest Coordination Agreement dated September 15, 1964. Copies of this filing have been served upon each party to the Pacific Northwest Coordination Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15375 Filed 6–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–558–000]

Pan-Alberta Gas (U.S.) Inc.; Application to Abandon

June 19, 1995.

Take notice that on June 14, 1995, Pan-Alberta Gas (U.S.) Inc. (Applicant), 500, 707 Eighth Avenue, S.W., Calgary, Alberta Canada, T2P 3V3, filed pursuant to Section 7(b) of the Natural Gas Act, and Section 9 of the Alaska Natural Gas Transportation Act, for authority to abandon, effective upon the termination of the underlying contract, its firm exchange of up to 75,000 Mcf/d with Northern Natural Gas Company (Northern). The exchange was certificated by the Commission as part of the Alaskan Natural Gas Transportation System prebuild project on December 21, 1989, in Docket No. CP79–396–007. Applicant is submitting this application in conjunction with a related filing by Northern.

Any person desiring to be heard or to protest with reference to said application should on or before July 10, 1995, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required, or if the Commission on its own review of the matter finds that permission and approval of the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15372 Filed 6–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1148–000]

PSI Energy, Inc.; Notice of Filing

June 19, 1995.

Take notice that on May 31, 1995, PSI Energy, Inc. tendered for filing its informational filing for calendar year 1994, pursuant to the orders issued in Docket Nos. EC93–6–000, EC93–6–001 and ER94–1015–000 on August 16, 1993 and October 3, 1994.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 30, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15376 Filed 6–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–423–000]

Texas Gas Transmission Corp.; Notice of Informal Settlement Conference

June 19, 1995.

Take notice that informal settlement conferences will be convened in the above-captioned proceeding commencing at 1:00 pm on Wednesday, July 5, 1995, through Thursday, July 6, 1995, and reconvening at 10:00 am Wednesday, July 12, 1995, through Thursday, July 13, 1995, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE, Washington, D.C., for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to

attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations (18 CFR 385.214).

For additional information please contact Michael D. Cotleur, (202) 208–1076, or Russell B. Mamone (202) 208–0744.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15378 Filed 6–22–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $10,700,000, plus accrued interest, in alleged crude oil overcharges obtained by the DOE pursuant to a Settlement Agreement entered into by the DOE and Murphy Oil Corp., Murphy Oil USA, Inc. and Murphy Exploration & Production Co., Case No. VEF–0003 (Murphy). The DOE has determined that the funds obtained from Murphy will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986).

DATES AND ADDRESSES: Applications for Refund from the crude oil funds should be clearly labeled ''Application for Crude Oil Refunds'' and should be mailed to Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., Washington, DC 20585. Applications for Refund must be filed in duplicate no later than June 30, 1995. Any party who has previously filed an Application for Refund should not file another for the present crude oil funds. The previously filed crude oil application will be deemed filed in all crude oil proceedings as the proceedings are finalized.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Ave., S.W., Washington, DC 20585, (202) 586–2094 (Mann); 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 C.F.R. 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures the DOE has formulated to distribute a total of $10,700,000, plus accrued interest, obtained from Murphy pursuant to the Settlement Agreement entered into by Murphy and the DOE. The DOE is currently holding these funds in an interest bearing account, pending distribution.

The OHA will distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers will be based on the volume of petroleum products that they purchased and the extent to which they can demonstrate injury.

Applications for Refund must be postmarked no later than June 30, 1995. As we state in the Decision, any party who has previously filed a refund application in the crude oil proceedings should not file another application for refund. The previously filed crude oil application will be deemed filed in all crude oil proceedings as the proceedings are finalized.

Dated: June 15, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

Implementation of Special Refund Procedures

Name of Firm: Murphy Oil Corp./ Murphy Oil USA, Inc.
Date of Filing: October 25, 1994
Case Number: VEF–0003

On October 25, 1994, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute $10,700,000 remitted by Murphy Oil Corp., Murphy Oil USA, Inc., and Murphy Exploration & Production Co. (collectively referred to as ''Murphy''), pursuant to a Consent Order entered into between Murphy and the DOE on July 15, 1994. In accordance with the procedural regulations codified at 10 C.F.R. Part 205, Subpart V (Subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of alleged regulatory violations which were resolved by the present Consent Order. This Decision and Order sets forth the OHA's plan to distribute these funds.

I. Background

Murphy is a major integrated refiner which produced and sold crude oil and a full range of refined petroleum products during the period of federal price controls. As such, it was subject to the federal petroleum price and allocation regulations. During that time, the ERA conducted an extensive audit of Murphy and issued an Issue Letter to Murphy on September 29, 1976. ERA issued a Notice of Probable Violation to Murphy on January 28, 1981. ERA issued a Proposed Remedial Order (PRO) to Murphy on December 15, 1986, which Murphy contested before the OHA.

On February 9, 1987, Murphy and the DOE entered into a Consent Order which resolved disputes regarding Murphy's refined petroleum product operations during the period the petroleum price and allocation regulations were in effect. See *Murphy Oil Corp.*, 17 DOE ¶ 85,782 (1987) (the first Consent Order). The first Consent Order left the issue of Murphy's alleged violations as a producer of crude oil unresolved. Those issues were decided by the OHA on June 17, 1992 when the OHA issued a modified version of the PRO as a Remedial Order (RO). See *Murphy Oil Corp.*, 22 DOE ¶ 83,005 (1992). Murphy subsequently appealed the OHA's determination to the Federal Energy Regulatory Commission (FERC). On January 24, 1994, a FERC Administrative Law Judge (ALJ) issued a Decision and Proposed Order (D&PO) which modified the RO. See *Ocean Drilling & Exploration Co., et al.*, 66 FERC ¶ 63,002 (1994).

On July 15, 1994, Murphy and the DOE entered into the present Consent Order. This second Consent Order, which does not modify or affect the terms of the first Consent Order, resolves all existing or potential civil and administrative claims against Murphy for alleged violations of the federal petroleum price and allocation regulations left unresolved by the first Consent Order. Under the terms of this second Consent Order, Murphy has remitted $10,700,000 to the DOE, and all outstanding or potential crude oil overcharge claims by the DOE against Murphy have been settled. These funds are being held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper distribution.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see* The Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07; *Office of Enforcement,* 9 DOE ¶ 82,508 (1981); *Office of Enforcement,* 8 DOE ¶ 82,597 (1981).

III. The Proposed Decision and Order

We considered the ERA's Petition that we implement a Subpart V proceeding with respect to the Murphy funds and, on December 12, 1994, we issued a Proposed Decision and Order (PDO) setting forth the tentative plan to distribute these funds. *See* 59 FR 65332 (December 19, 1994). In the PDO, we proposed to distribute the Murphy funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 Fed. Reg. 27899 (August 4, 1986) (the MSRP). The MSRP was issued as a result of the Stripper Well Settlement Agreement. *In re: The Department of Energy Stripper Well Exemption Litigation,* 653 F. Supp. 108 (D. Kan.), 6 Fed. Energy Guidelines ¶ 90,509 (1986). Under the MSRP, 40 percent of the crude oil overcharge funds will be remitted to the federal government and 40 percent to the states for indirect restitution, and up to 20 percent may be initially reserved for direct restitution to injured parties. Any money remaining after all valid claims by injured parties are paid will be disbursed to the federal government and the states in equal amounts.

We received two comments on the PDO. The first comment was submitted by the Controller of the State of California (Controller). The second comment was submitted by Utilities, Transporters and Manufacturers (UTM), a consortium of six utilities, fourteen transporting companies, and five manufacturers. Both address the issue of royalties paid by Murphy to the federal government under its lease agreements to produce crude oil from federal lands.[1]

A. The Royalty Issue

As part of its operations, Murphy leased land from the United States and paid royalties to the United States Geological Survey of the Department of the Interior (USGS) on all crude oil produced from federal lease areas. During the Murphy enforcement proceedings, Murphy claimed that the United States had benefited from the overcharges through increased royalty payments (since royalty payments are based on the sale price of crude produced from leased federal land). Accordingly, Murphy argued, the amount of any overcharges assessed against Murphy should be reduced by the amount of royalties paid to prevent the United States from enjoying a double recovery. *Murphy Oil Corp.,* 22 DOE ¶ 83,005 at 86,097. While the OHA rejected this argument, the FERC ALJ found that the argument had merit. The ALJ ordered the OHA to reconsider the issue on remand and determine to what extent the United States benefited from the overcharges through increased royalty payments, and to reduce Murphy's overcharges accordingly. *Ocean Drilling & Exploration Co., et al.,* 66 FERC ¶ 63,002 at 65,027–29.

The second Murphy Consent Order eliminated the need to make any such determination, since it settled all claims by the DOE against Murphy in exchange for one lump sum payment. In its announcement of the Proposed Consent Order, the ERA listed the royalty issue as one of the matters addressed and settled by the agreement between Murphy and the DOE. Announcement of Proposed Consent Order with Murphy Oil Corporation, Murphy Oil USA, Inc., and Murphy Exploration & Production Co., 59 FR 38169, at 38170 (July 27, 1994).

In response to the Proposed Consent Order, the Controller and UTM submitted comments asking that, if the ERA accepted an offset from the alleged overcharges based on FERC's determination on the royalty issue, the ERA identify the amount of money in the settlement set aside as royalty payments. UTM and the Controller further stated that this amount should not be subject to the usual division of funds between the federal government, the states, and individual claimants, as set forth in the MSRP. Instead, they argued that the amount attributable to the royalty issue should be divided exclusively between the states and individual claimants to prevent any sort of ''double recovery'' by the federal government. For a more detailed discussion of their comments, see Announcement of Final Consent Order with Murphy Oil Corporation, Murphy Oil USA, Inc. and Murphy Exploration & Production Company, 59 Fed. Reg. 47315 (September 15, 1994) (Final Consent Order Notice). In considering these comments, the ERA stated that it would be difficult to set a dollar value on the amount attributable to the royalty issue.[2] The ERA also stated that consideration of any comments regarding the division of funds should wait until the implementation of the Subpart V process. Accordingly, the Controller and UTM have filed comments with us after the publication of the PDO in the **Federal Register**.

B. Comments of the Controller and UTM

Both the Controller and UTM argue that none of the Murphy Consent Order fund attributable to the royalty issue should be disbursed to the federal government for indirect restitution under the MSRP. In addition, since the ERA did not set a value on the royalty issue in the Final Consent Order Notice, UTM proposes its own formula for determining the percentage of the Murphy funds attributable to the royalty issue.

C. Analysis of Comments

As explained below, we find no merit in the Controller's and UTM's arguments that we should alter the normal formula set forth in the MSRP for the disbursement of funds in this proceeding.

The Controller asserts that, by compromising with Murphy on the royalty issue in the final Consent Order, the ERA reduced the amount of the settlement. The Controller argues that, in so doing, ERA had, in effect, acted to reduce the potential amount of restitutionary funds available to the states and individual claimants. Controller Comments at 1. The Controller maintains that this is inequitable in light of the determination of the FERC ALJ that the federal government may have benefited from the overcharges through the royalties. The Controller therefore asks us to deny the federal government the right to receive any money attributable to the royalty issue, so that the states and individual claimants ''are not required to bear this burden out of their share of the refund.'' *Id.* at 2.

UTM's position is also based on the issue raised by the FERC ALJ that the federal government, through the royalty payments made to the USGS, may have benefited from the overcharges. UTM

[1] UTM also commented, without elaboration, upon the Subpart V proceedings as a whole. We have previously considered these comments at length and rejected them. We therefore do not discuss them again here. See *Permian Corp.,* 23 DOE ¶ 85,034 (1993); *Seneca Oil Co.,* 21 DOE ¶ 85,327 (1991).

[2] However, in two footnotes, the ERA indicated that the value could be $341,798, or 3.2% of the total. Final Consent Order Notice at 47316 n.3, 47317 n.5.

Comments at 3. According to UTM's theory, we should regard the royalty payments as ''an advance payment of restitution to the U.S. Treasury.'' *Id.* Therefore, UTM argues, the federal government should receive none of the money attributable to the royalty issue, in order to preserve the 40:40:20 ratio set forth in the Stripper Well Settlement Agreement and the MSRP.[3]

We reject these arguments to change the disbursement of the Murphy Consent Order funds from the formula set forth in the Stripper Well Settlement Agreement. Under the statute and regulations governing the litigation between Murphy and the DOE, the final Consent Order is a final Order of the DOE which is not subject to administrative appeal. See Department of Energy Organization Act, section 503, 42 U.S.C. 7193; 10 C.F.R. 205.199B. It therefore supersedes the determination of the FERC ALJ and forecloses further inquiry into the issue of whether, and to what extent, the federal government may have benefited from the alleged Murphy overcharges through the royalties paid to USGS. We instead rely on the ERA's statement that ''it is neither practical nor appropriate to quantify the portion of the $10.7 million proposed settlement sum that exceeds the $5.2 million in restitution under the D&PO that can be ascribed to the royalty payment issue.'' Final Consent Order Notice, 59 FR 47315, 47316. As the Court of Appeals recently noted in *Mullins* v. *DOE,* No. 93–1424 (Fed. Cir. March 25, 1995), *petition for rehearing en banc denied* (June 8, 1995), the OHA may rely on ERA's statements about overcharges compromised in settlements when implementing Subpart V refund procedures.

Furthermore, contrary to the Controller's assertion, the ERA did not disturb the ''inviolate'' allocation of the crude oil restitutionary funds by agreeing to settle the Murphy crude oil overcharge litigation. The disbursement of crude oil overcharge funds is based on the total amount of funds collected by the DOE in its enforcement proceedings and then turned over to the OHA for distribution through Subpart V proceedings. It is not based on the potential amount of funds that the DOE could have obtained if it successfully litigated every claim to finality. The ERA correctly noted that the royalty issue was one of the litigation risks which could justifiably be compromised in settlement. See Final Consent Order Notice at 47315, 47317. As courts have noted in the past, Consent Orders result from a process in which each party ''gives up something it might have won in litigation.'' *Consumer Energy Council* v. *Duncan,* No. CA 80–2570 (D.D.C. April 1, 1981), 3 Fed. Energy Guidelines ¶ 26,314 (1981) (*CEC*). Consent Order negotiations, therefore, fall entirely within ERA's prosecutorial discretion. *Id.* See also *Payne 22, Inc.,* 762 F.2d 91 (1985) (Court review of DOE Consent Orders would result ''in chaos''). If we followed the Controller's logic to its natural conclusion, the OHA could never rely on an ERA Consent Order. Instead, the OHA would need to determine what ERA could conceivably have won in completely successful litigation and deduct the amount of any compromise from the federal share of any crude oil refund disbursement under the MSRP. This notion is patently absurd. It would run counter to the considerations of administrative efficiency underlying ERA's settlement authority, and impose an impossible burden on DOE's limited resources. *CEC,* 3 Fed. Energy Guideline at 28,417.

We do not, however, rely solely on these considerations in rejecting the Controller's and UTM's comments on the proper disbursement of funds. We reject the suggested disbursement changes because they stem from a misunderstanding of the federal government's role in the disbursement of funds for indirect restitution. Our recent holding in *Defense Logistics Agency,* 24 DOE ¶ 85,134 (1995) (*DLA*) is relevant here. As we stated in *DLA,* the federal government is not seen as a monolithic entity for the purposes of refund proceedings. Its role in the division of funds is entirely separate from the role of individual agencies as consumers of petroleum products or, in the case of USGS, as a collector of royalties for crude oil produced on federal land. ''[T]he division of monies between the federal government and the states pursuant to the terms of the Settlement Agreement arose as a function of their role as *parens patriae,* as stand-ins for their citizens who, though unidentified, were nonetheless injured by the crude oil overcharges.'' *Id.* at 88,415. In other words, the federal government's 40 percent share of crude oil monies for indirect restitution under the MSRP is not paid to compensate the federal government for any injuries from petroleum overcharges. It is paid to the federal government so that the federal government can compensate the mass of unidentified citizens who all suffered to some degree from the overcharges.

The federal government and the states also have other, different roles in the process. For example, we have held that state and federal agencies may receive refunds as end-users in refund proceedings because their role as purchasers and consumers is entirely separate from their role in providing indirect restitution to their citizens. *Id.; City of Burbank,* 19 DOE ¶ 85,169 (1989) (No double recovery ''is presented by a state serving as a conduit for indirect restitution on behalf of its citizens, while at the same time receiving direct restitution in its own right for petroleum product purchases.''); *Metropolitan Atlanta Rapid Transit Authority,* 17 DOE ¶ 85,243 (1988); *Chicago Transit Authority,* 17 DOE ¶ 85,223 (1988). Pursuant to this reasoning, we have granted direct refunds to a number of states based on their purchases of petroleum products. *See, e.g., The Commonwealth of Massachusetts,* 22 DOE ¶ 85,002 (1992); *State of Minnesota,* 21 DOE ¶ 85,342 (1991); *State of Tennessee,* 21 DOE ¶ 85,334 (1991); *State of New Hampshire,* 21 DOE ¶ 85,234 (1991); *State of Arkansas,* 20 DOE ¶ 85,741 (1990). Similarly, any benefit USGS received from the alleged overcharges through the royalties has no effect upon the disbursement of the Murphy funds to the federal government for indirect restitution.

In addition, if we accepted UTM's argument that we consider royalty payments to the USGS as an advance payment of restitution, we would need to apply the same principle to the states. Several states have leasing provisions for state-owned land which require payments of royalties on mineral rights. To apply this principle consistently, we would be forced to revisit each crude oil overcharge proceeding in which we have disbursed money to the states, determine if the funds came from a firm which paid royalty payments to any state, and retroactively deduct that amount from our disbursement to the states in question. Such a scheme would be hopelessly complex, particularly at this late date, and we would refuse to adopt UTM's arguments for this reason alone.

In conclusion, we reject UTM's argument that we depart from the disbursement of funds set out in the MSRP and the Stripper Well Agreement. Whether one agency of the federal government arguably received some benefit from the alleged overcharges is immaterial to the right of all United States citizens to receive indirect restitution through the 40 percent share of the Murphy Consent Order fund deposited in the United States Treasury under the MSRP. In addition, principles of administrative efficiency would provide ample reason not to deviate

[3] In view of our determination not to alter the distribution of funds from the formula in the MSRP, there is no need to discuss UTM's suggested method of estimating the percentage of the Murphy funds attributable to the royalty issue.

from our established policy and begin a lengthy examination into the question of which states received royalty payments from crude oil producers, how much the states may have benefited from these royalties, and whether to rescind refunds already made to them. Accordingly, we have decided that we will not alter the formula.

IV. The Refund Procedures

A. Crude Oil Refund Policy

As explained above, we will distribute the Murphy funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the MSRP). As noted above, the MSRP establishes that 40 percent of the crude oil overcharge funds will be remitted to the federal government, another 40 percent to the states, and up to 20 percent may initially be reserved for the payment of claims by injured parties. The MSRP also specifies that any monies remaining after all valid claims by injured purchasers are paid be disbursed to the federal government and the states in equal amounts. The OHA has utilized the MSRP in all Subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). This Order provided a period of 30 days for the filing of comments or objections to our proposed use of the MSRP as the groundwork for evaluating claims in crude oil refund proceedings. Following this period, the OHA issued a Notice evaluating the numerous comments which it received pursuant to the Order Implementing the MSRP. This Notice was published at 52 FR 11737 (April 10, 1987) (the April 10 Notice).

The April 10 Notice contained guidance to assist potential claimants wishing to file refund applications for crude oil monies under the Subpart V regulations. Generally, all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) prove that they were injured by the alleged crude oil overcharges. We also specified that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have been injured by the alleged crude oil overcharges and need not submit any additional proof of injury beyond documentation of their purchase volumes. See *City of Columbus, Georgia,* 16 DOE ¶ 85,550 (1987). Additionally, we stated that crude oil refunds would be calculated on the basis of a per gallon (or ''volumetric'') refund amount, which is obtained by dividing the crude oil refund pool by the total consumption of petroleum products in the United Sates during the crude oil price control period. The OHA has adopted the refund procedures outlined in the April 10 Notice in numerous cases. See, *e.g., Texaco, Inc,* 19 DOE ¶ 85,200 (1989); *Shell Oil Co.,* 17 DOE ¶ 85,204 (1988) (*Shell*); *Mountain Fuel Supply Co.,* 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*).

B. Refund Claims

We adopt the DOE's standard crude oil refund procedures to distribute the monies remitted by Murphy. We have chosen initially to reserve 20 percent of the fund, plus accrued interest, for direct refunds to claimants in order to ensure that sufficient funds will be available for injured parties. This reserve figure may later be reduced if circumstances warrant.

The OHA will evaluate crude oil refund claims in a manner similar to that used in Subpart V proceedings to evaluate claims based on alleged refined product overcharges. See *Mountain Fuel,* 14 DOE at 88,869. Under these procedures, claimants will be required to document their purchase volumes of petroleum products and prove they were injured as a result of the alleged violations.

We adopt a presumption that the alleged crude oil overcharges were absorbed, rather than passed on, by applicants which were (1) end-users of petroleum products, (2) unrelated to the petroleum industry, and (3) not subject to the regulations promulgated under the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751–760h. In order to receive a refund, end-user claimants need not submit any evidence of injury beyond documentation of their purchase volumes. See *Shell,* 17 DOE at 88,406.

Petroleum retailer, reseller, and refiner applicants must submit detailed evidence of injury, and they may not rely upon the injury presumptions utilized in refined product cases. *Id.* These applicants, however, may use econometric evidence of the type found in the *OHA Report on Stripper Well Overcharges,* 6 Fed. Energy Guidelines ¶ 90,507 (1985). See also PODRA section 3003(b)(2), 15 U.S.C. § 4502(b)(2). If a claimant has executed and submitted a valid waiver pursuant to one of the escrows established by the Stripper Well Settlement Agreement, it has waived its rights to file an application for Subpart V crude oil refund monies. See *Mid-America Dairymen* v. *Herrington,* 878 F.2d 1448 (Temp. Emer. Ct. App.), 3 Fed. Energy Guidelines ¶ 26,617 (1989); *In re: Department of Energy Stripper Well Exemption Litigation,* 707 F. Supp. 1267 (D. Kan.), 3 Fed Energy Guidelines ¶ 26,613 (1987).

As has been stated in prior Decisions, a crude oil refund applicant will only be required to submit one application for its share of all available crude oil overcharge funds. See, *e.g., A. Tarricone, Inc.,* 15 DOE ¶ 85,495 (1987). A party that has already submitted a claim to any other crude oil refund proceeding implemented by the DOE need not file another claim. The prior application will be deemed to be filed in all crude oil refund proceedings finalized to date. The final deadline for the crude oil refund proceeding is June 30, 1995. It is the policy of the DOE to pay eligible crude oil refund claimants at the rate of $0.0016 per gallon. We will decide after the resolution of a few outstanding enforcement proceedings whether sufficient funds are available for additional refunds.

To apply for a refund, a claimant should submit an Application for Refund containing the information specified by the OHA in past Decisions. See, *e.g., Permian Corp.,* 23 DOE ¶ 85,034 (1993); *Hood Goldsberry,* 18 DOE ¶ 85,902 (1989). All applications must be postmarked no later than June 30, 1995 and sent to: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585

Although an applicant is not required to use any specific form for its crude oil refund application, a suggested form has been prepared by the OHA and may be obtained by sending a written request to the address listed above.

C. Payments to the Federal Government and the States

Under the terms of the MSRP, we have determined that the remaining 80 percent of the Murphy funds, plus accrued interest, should be disbursed in equal shares to the states and the federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement, 6 Fed. Energy Guidelines ¶ 90,509 at 90,687. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Settlement Agreement.

It Is Therefore Ordered That:

(1) Applications for Refund from the crude oil overcharge funds remitted by Murphy Oil Corp./Murphy Oil USA, Inc., may now be filed.

(2) All Applications submitted pursuant to paragraph (1) must be filed in duplicate and postmarked no later than June 30, 1995.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller of the Department of Energy shall take all steps necessary to transfer $10,700,000, plus all accrued interest, from the Murphy subaccount (Account No. RMUC01994W) pursuant to Paragraphs (4), (5), and (6) of this Decision.

(4) The Director of Special Accounts and Payroll shall transfer $4,280,000 (plus interest) of the funds obtained pursuant to Paragraph (3) above into the subaccount denominated ''Crude Tracking-States,'' Number 999DOE003W.

(5) The Director of Special Accounts and Payroll shall transfer $4,280,000 (plus interest) of the funds obtained pursuant to Paragraph (3) above into the subaccount denominated ''Crude Tracking-Federal,'' Number 999DOE002W.

(6) The Director of Special Accounts and Payroll shall transfer $2,140,000 (plus interest) of the funds obtained pursuant to Paragraph (3) above into the subaccount denominated ''Crude Tracking-Claimants 4,'' Number 999DOE010Z.

Date: June 15, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–15465 Filed 6–22–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5226–2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 24, 1995.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, please refer to EPA ICR # 0143.05.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Recordkeeping Requirements for Producers of Pesticides (EPA ICR No.: 0143.05; OMB No.: 2070–0028). This is a request for an extension of the expiration date of a currently approved collection.

Abstract: This collection requires producers of pesticides to maintain records related to production and other operations. EPA may inspect these records to determine compliance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Producers themselves may use the records to fulfill various FIFRA-mandated reporting requirements.

Burden Statement: The estimated annual recordkeeping burden for this collection of information is an average of 2 hours per pesticide producer. This estimate includes the time needed to review instructions, plan activities, gather information, process and review for accuracy, and store and maintain the information.

Respondents: Pesticide producers.

Estimated No. of Respondents: 12,700.

Estimated No. of Responses per Respondent: 0 (Recordkeeping only).

Estimated Total Annual Burden on Respondents: 25,400 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, (please refer to EPA ICR # 0143.05 and OMB # 2070–0028) to:

Sandy Farmer, EPA ICR # 0143.05, U.S. Environmental Protection Agency, Regulatory Information Division—2136, 401 M Street, S.W., Washington, D.C. 20460.

and

Tim Hunt, OMB # 2070–0028, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: June 19, 1995.

Richard Westlund,

Acting Director for Regulatory Information Division.

[FR Doc. 95–15432 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5226–5]

Proposed Stipulation of Settlement; NO_X Waivers for Clean Air Act Conformity Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed stipulation; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act (Act), notice is hereby given of a proposed stipulation of partial settlement in litigation instituted against the Environmental Protection Agency (EPA) challenging EPA's rules on determining conformity of federal actions to State Implementation Plans (SIPs). The Environmental Defense Fund (EDF) and several other environmental groups challenged numerous aspects of EPA's transportation and general conformity rules issued under section 176(c) of the Act (58 FR 62,188 (Nov. 24, 1993); 58 FR 63,214 (Nov. 30, 1993)). *EDF et al.* v. *EPA, et al.*, D.C. Cir. No. 94–1044 and consolidated cases.

EPA is currently reconsidering various provisions of these regulations, including some of those under challenge by EDF. The parties to the litigation agree that judicial consideration of the issues under reconsideration by EPA should be stayed pending EPA action with respect to any changes to those provisions.

One of the provisions under reconsideration by EPA is EPA's authority to issue exemptions from interim conformity requirements for NO_X emissions under the authority of section 182(f) of the Act. EPA proposes to enter into a stipulation with EDF in which EPA will commit not to use the authority of the conformity regulations to sign any conformity waivers under section 182(f) of the Act for areas subject to section 182(b)(1) of the Act from April 20, 1995 until EPA takes final action completing the reconsideration of the conformity regulations with respect to this issue. In addition, if EPA grants any conformity waivers during the period described above as to areas not subject to 182(b)(1) and the regulatory provisions relied upon in issuing such waivers are reversed by the court, EPA agrees to reconsider any such waivers within six months following such court determination.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed modification of the stipulation of settlement. EPA or the Department of Justice may withhold or withdraw

consent to the proposed modification if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Copies of the proposed stipulation are available from Sara Schneeberg, Air and Radiation Division (2344R), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 235–5332. Written comments should be sent to Sara Schneeberg at the above address and must be submitted on or before July 24, 1995.

Dated: June 14, 1995.

Jean C. Nelson,

General Counsel.

[FR Doc. 95–15437 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4724–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed June 12, 1995 Through June 16, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950255, FINAL EIS, GSA, AZ, Phoenix Federal Building—United States Courthouse, Site Selection and Construction within a portion of the Central Business District, City of Phoenix, AZ, Due: July 24, 1995, Contact: Alan R. Campbell (415) 744–5252.

EIS No. 950256, FINAL EIS, GSA, WA, Seattle Federal Courthouse Building (Project # ZWA 81061), Implementation, Site Selection, Construction and Operation, King County, WA, Due: July 24, 1995, Contact: Donna M. Meyer (206) 931–7675.

EIS No. 950257, DRAFT EIS, FHW, NY, I–287 Cross Westchester Expressway (CWE) Transportation Improvements, New York State Thruway Route-303 to Route-120, Funding, Right-of-Way Acquisition, COE Section 10 and 404 Permits, Rockland and Westchester Counties, NY, Due: August 07, 1995, Contact: Vin Tabor (518) 431–4126.

EIS No. 950258, FINAL EIS, AFS, CO, Loveland Ski Area Master Development Plan, Implementation, Arapaho National Forest, Clear Creek Ranger District, Clear Creek County, CO, Due: July 24, 1995, Contact: Sue Greenley (303) 567–2901.

EIS No. 950259, FINAL EIS, DOE, WA, ID, NV, MT, UT, OR, CA, AZ, WY, NM, Business Plan to Operate Electric Utility Market, Transmission Services and Fish and Wildlife Activities, Funding and Implementation, WA, OR, ID, CA, NV, AZ, MT, WY, UT, NM and British Columbia, Due: July 24, 1995, Contact: Carol M. Borgstrom (800) 472–2756.

EIS No. 950260, FINAL EIS, AFS, VT, Mad River Water Withdrawal and Sugarbush South Snowmaking and Trail Improvement Project, Approval, Special-Use and COE Section 404 Permits Issuance, Green Mountain National Forest, Washington County, VT, Due: July 24, 1995, Contact: Sam Emmons (802) 747–6757.

EIS No. 950261, DRAFT EIS, BLM, WY, Jackpot Underground Uranium Mine Project, Construction and Operation, Plan of Operation Approval, NPDES Permit and COE Section 404 Permit, Fremont and Sweetwater Counties, WY, Due: August 22, 1995, Contact: Larry Kmoch (307) 324–7171.

EIS No. 950262, FINAL EIS, AFS, ID, Grays Ranger Timber Sales, Implementation, Caribou National Forest, Soda Springs Ranger District, Caribou County, ID, Due: July 24, 1995, Contact: Anthony A. Varibre (208) 547–4356.

EIS No. 950263, FINAL EIS, AFS, Red-Cockaded Woodpecker (RCW) (Picoides borealis) Repopulation and Habitat Areas Management Implementation, National Forests in the Southern Region, Due: July 24, 1995, Contact: Dennis L. Krusac (404) 347–4338.

EIS No. 950264, FINAL EIS, USN, SC, Charleston Naval Base Disposal and Reuse, Implementation, Charleston and Dorchester Counties, SC, Due: July 24, 1995, Contact: William Sloger (803) 743–0797.

Amended Notices

EIS No. 950082, DRAFT EIS, AFS, PR, Caribbean National Forest Land and Resource Management Plan, Implementation, PR, Due: July 17, 1995, Contact: Pablo Cruz (809) 766–5335. Published FR 03–17–95—Review period extended.

EIS No. 950170, DRAFT EIS, FHW, WI, US 12 Highway Improvement, Sauk City to Middleton, Funding and COE Section 404 Permits Issuance, Sauk and Dane Counties, WI, Due: July 17, 1995, Contact: Richard Madrzak (608) 264–5968. Published FR—05–05–95 Review period extended.

EIS No. 950177, DRAFT SUPPLEMENT, COE, TX, OK, Red River Chloride Control Project, Construction and Operation Methods, Updated and Additional Information, several counties TX and OK, Due: July 05, 1995, Contact: David L. Combs (918) 669–7188. Published FR 03–17–95—Review period extended.

EIS No. 950238, FINAL EIS, SFW, NV, Desert Tortoises (Gopherus Agassizii) Habitat, Issuance of Permit to Allow Incidental Take, Federal Land and Non-Federal Land, Clark County, NV, Due: July 10, 1995, Contact: Al Pfister (503) 231–6241. Published 6–09–95—Telephone Number Correction.

Dated: June 20, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–15472 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4724–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 15, 1995 Through May 19, 1995 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) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1995 (60 FR 19047).

Draft EISs

ERP No. D–AFS–K65240–CA Rating EC2, Barkley Fire Salvage Sale, Implementation, Lower Deer Creek Management Area, Lassen National Forest, Almanor Ranger District, Tehama County, CA.

Summary: EPA expressed environmental concerns because the draft EIS does not sufficiently describe impacts to water quality, air quality and biodiversity—including plant species and wildlife.

ERP No. D–AFS–L60101–ID Rating EC2, Secesh River Subdivision Access Roads, Implementation, Special-Use-Permit, Idaho County, ID.

Summary: EPA expressed environmental concerns based on potential water quality impacts, specifically potential affects on Snake River chinook salmon, and no cumulative effects issues in the South Fork Salmon River Special Management Area.

ERP No. D–AFS–L65241–ID Rating EC2, Fish Bate Timber Sale, Implementation, North Fork Clearwater River, Clearwater National Forest, North

Fork Ranger District, Clearwater County, ID.

Summary: EPA expressed environmental concerns and is particularly concerned with the effects of timber harvest on fisheries in Sheep Creek, Sneak Creek and Bates Creek.

ERP No. D–COE–K36111–CA Rating EC2, Santa Paula Creek Flood Control Project, Improvements, Right-of-Way Grant, Ventura County, CA.

Summary: EPA expressed environmental concerns that the proposed action could further diminish the aquatic and streamside habitat by eliminating a reach of natural streambed. EPA recommended that the final EIS examine alternative designs which incorporate natural stream processes and promote habitat restoration, and reevaluate mitigation measures to ensure that impacts to wildlife and aquatic resources are fully offset.

ERP No. D–FHW–K40210–AZ Rating EC2, Pima Freeway—Loop 101, Construction, I–17 and Scottsdale Road, Funding, NPDES and COE Section 404 Permits, Maricopa County, AZ.

Summary: EPA expressed environmental concerns regarding air quality impacts, Environmental Justice, and floodplain management. EPA asked FHWA to provide more information in the Final EIS regarding CO microscale analysis, cumulative impacts, and also neighborhood demographics.

ERP No. D–IBR–A39137–00 Rating EO2, Acreage Limitation and Water Conservation Rules and Regulations, Revised and/or New Rules for Replacement and Expansion of Existing Rules pertaining to the Administration of the Reclamation Reform Act of 1982, Implementation in Seventeen Western States.

Summary: EPA expressed environmental objections over the limited analysis of alternatives that could promote a more environmentally protective allocation of water, and requested that the final EIS more fully explore opportunties for using conserved water for insteam purposes.

ERP No. D–USN–K11050–HI Rating EC2, Bellows Air Force Station Land Use and Development Plan, Implementation, Waimanalo, HI.

Summary: EPA requested additional data on wetlands and biological resources, identification of mitigation measures; and further discussion of cumulative impacts.

ERP No. DS–COE–K36009–CA Rating EO2, Napa River Flood Control Project, Updated Information, Flood Improvement, City of Napa, Napa County, CA.

Summary: EPA expressed environmental objections due to the potential for significant degradation of valuable riparian habitat. EPA requested that the final document provide greater detail on potential water quality impacts, impacts from upland sediment disposal, hazardous waste management, cumulative impacts and mitigation for impacts to wetland areas. EPA also requested that the final document include a discussion of non-structural alternatives.

FINAL EISs

ERP No. F–AFS–K65156–CA Shasta-Trinity National Forests Land and Resource Management Plan, Implementation, Humboldt, Modoc, Shasta, Siskiyou, Tehama and Trinity Counties, CA.

Summary: EPA expressed continuing concern with the adequacy of the opportunity for the public to thoroughly review the final LRMP/FEIS and the lack of detailed analysis of environmental consequences. Of specific concern is the minimal discussion of air quality, biodiversity, cumulative impacts, and mitigation measures.

ERP No. F–AFS–K65166–CA Cottonwood Fire Restoration Project, Implementation, Tahoe National Forest, Sierraville Ranger District, Sierra County, CA.

Summary: EPA expressed environmental objections with the projected adverse impact to water quality, particularly in watersheds with very high Threshold of Concern (TOC) levels and/or significant increments in erosion due to the project. The Record of Decision should commit to monitoring and mitigation necessary to demonstrate that Water Quality Standards and beneficial uses will be fully protected in all watersheds, consistent with the Clean Water Act.

ERP No. F–AFS–L65236–OR Santiam Pass Forest Health Project, Implementation, Willamette National Forest, McKenzie Ranger District, Linn County, OR.

Summary: Review of the final EIS has been completed and the project found to be environmentally satisfactory. No formal comment letter was sent to the preparing Agency.

ERP No. F–BLM–K67027–AZ Cypus Tohono Open Pit Mine Expansion Project, Plan of Operation Approval and Drilling Permit, Implementation, Tohono O'odham Nation, Papago Indian Reservation, Pinal County, AZ.

Summary: EPA expressed environmental concerns about the need for additional information regarding acid drainage potential, a discussion of the impacts and necessary measures to mitigate impacts to waters of the U.S. pursuant to Clean Water Act Section 404, and project monitoring. EPA recommended that these issues be resolved before BLM signs a Record of Decision.

ERP No. F–COE–C30009–NJ Atlantic Coast of New Jersey, Beach Erosion Control Project, Implementation, Sandy Hook to Barnegat Inlet within the Borough of Asbury Park to Manasquan, Monmouth County, NJ.

Summary: EPA commented that the final EIS adequately addressed EPA's concerns, and it does not object to implementation of the project.

ERP No. F–FHW–G40133–OK OK–99/OK–3E/US 377 North of Ada Transportation Corridor Reconstruction, Funding, COE Section 404 and NPDES Permits, Pontotoc and Seminole Counties, OK.

Summary: Review of the final EIS has been completed and the project found to be environmentally satisfactory. No formal comment letter was sent to the preparing Agency.

ERP No. F–FHW–J40126–MT US 2 Reconstruction, Columbia Heights to Hungry Horse, Funding, Land Transfer and COE Section 404 Permit, Flathead County, MT.

Summary: EPA expressed environmental concerns regarding the potential for the preferred alternative to hasten or induce changes in the pattern of land use, population density or growth rate in the Canyon area which may result in adverse effects to water, wetlands, wildlife habitat, and other natural and environmentally sensitve areas in undeveloped areas east of Columbia Heights. EPA also, identified inconsistences in the wetland impact evaluation.

ERP No. F–FRC–K02023–00 Tuscarora Natural Gas Pipeline Project, Construction and Operation, Right-of-Way Grant, Special-Use-Permit, NPDES Permit and COE Section 404 Permit, Lassen County, CA; Washoe and Storey Counties, NV and Klamath County, OR.

Summary: EPA continues to have environmental concerns regarding cultural resource mitigation and requested that appropriate mitigation be included in the Record of Decision.

ERP No. F–FRC–L02022–AK Yukon Pacific Liquefied Natural Gas (LNG) Liquefaction Plant Construction and Operation, Approval, Anderson Bay, Port Valdez, AK.

Summary: EPA expressed environmental concerns that the final EIS did not contain a detailed Prevention of Significant Deterioration (PSD) permit analysis or detailed

information on wetland impacts and mitigation.

Other

ERP No. LD–AFS–L61202–ID Rating LO, White Sand Creek and a Two-Mile Segment of the Upper Lochsa River Wild and Scenic River Suitability Study for Designation or Nondesignation in the Wild and Scenic Rivers System, Clearwater National Forest, Idaho County, ID.

Summary: EPA expressed lack of environmental objections. No formal comment letter was sent to the preparing Agency.

ERP No. LD–AFS–L61203–ID Rating LO, Upper Selway River Tributaries, Wild and Scenic River Study, for Fifteen Rivers, Suitability and Unsuitability, National Wild and Scenic Rivers Systems, Nez Perce National Forest, Idaho County, ID.

Summary: EPA expressed lack of environmental objections. No formal comment letter was sent to the preparing Agency.

Dated: June 20, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–15473 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5225–4]

Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Sterling Chemicals

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Decision on Exemption Reissuance.

SUMMARY: Notice is hereby given that a Petition for reissuance of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Sterling Chemicals, for the Class I injection wells located at Texas City, Texas. As required by 40 CFR Part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Sterling Chemicals of the specific restricted hazardous waste identified in the petition for reissuance, into the Class I hazardous waste injection wells at the Texas City, Texas facility specifically identified in the petition for as long as the basis for granting an approval of this petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued April 24, 1995. The public comment period ended on June 8, 1995. EPA received no comments. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of June 15, 1995.

ADDRESSES: Copies of the petition for reissuance and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W–SU), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Phil Dellinger, Unit Leader, UIC State Programs/Land Ban, EPA—Region 6, telephone (214) 665–7142.

Robert Hannesschlager,

Acting Director, Water Management Division (6W).

[FR Doc. 95–15434 Filed 6–22–95; 8:45 am]

BILLING CODE 6565–50–P

[OPP–00411; FRL–4962–2]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 1-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP), in conjunction with members of the Science Advisory Board, to review a set of scientific issues being considered by the Agency in connection with a report prepared by the Aquatic Dialogue Group for the Society of Environmental Toxicology and Chemistry (SETAC) titled: *Aquatic Risk Assessment and Mitigation (November 1994).* The report presents the Aquatic Dialogue Group's deliberations concerning aquatic risk assessment procedures, when aquatic mitigation would be necessary for agricultural use of pesticides, followed by mitigation methods that are currently available. Methods for assessing the efficacy of mitigation actions to reduce or eliminate exposure and/or effects to aquatic resources are also presented in this report. This report is the result of open scientific discussions between EPA, the Agricultural Chemical Protection Association, agrichemical companies, academia, and environmental and agricultural interest groups.

DATES: The meeting will be held on Monday, July 17, 1995, from 8:30 a.m. to 4:30 p.m. Written comments should be submitted by June 30, 1995.

ADDRESSES: The meeting will be held at: Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, in the 11th Floor Conference Room (''Fishbowl'', Rm. 1123).

Submit written comments (1 original and 20 copies) to: By mail: Public Response and Program Resources Branch, Field Operations Division (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. 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 ''OPP–00411.'' No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: By mail: Robert B. Jaeger, Designated Federal Official, FIFRA Scientific Advisory Panel (7509C), Office of Pesticide Programs, Environmental Protection Agency, 40l M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 815B, CM #2, 192l Jefferson Davis Highway, Arlington, VA, (703) 305–5369/7351, e-mail: jaeger.bruce@epamail.epagov. Copies of the SETAC Report may be obtained by contacting: By mail: Rodney Parrish, Executive Director, SETAC//SETAC Foundation for Environmental Education, 1010 North 12th Avenue, Pensacola, Florida 32501. By telephone: (904) 469–1500/9777.

Copies of EPA documents may be obtained by contacting: By mail: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs,

Environmental Protection Agency, 40l M St., SW., Washington, DC 20460. Office location and telephone number: Rm. ll32 Bay, CM #2, l92l Jefferson Davis Highway, Arlington, VA, (703) 305–5805.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will follow the general outline of the report. Any member of the public wishing to submit written comments should contact Robert B. Jaeger at the address or the phone number given above to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons are permitted to file written statements before the meeting. To the extent that time permits and upon advanced written request to the Designated Federal Official, interested persons may be permitted by the chairman of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. Since oral statements will be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements should notify the Designated Federal Official and submit 20 copies of a summary no later than June 30, 1995, in order to ensure appropriate consideration by the Panel.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. All statements will be made part of the record and will be taken into consideration by the Panel.

A public record has been established for this notice under docket number ''OPP–00411'' (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 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''**ADDRESSES**'' at the beginning of this document.

Copies of the Panel's report of their recommendations will be available 10 to 15 working days after the meeting and may be obtained by contacting the Public Response and Program Resources Branch, at the address or telephone number given above.

Dated: June 16, 1995.

Penelope A. Fenner-Crisp,

Acting Director, Office of Pesticide Programs.

[FR Doc. 95–15442 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5225–8]

Common Sense Initiative Council (CSIC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory CSIC Metal Finishing Sector Subcommittee Meeting; Open Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Metal Finishing Sector Subcommittee of the Common Sense Initiative Council (CSIC) will meet on the date and times described below. All times noted are Central Time. The meeting is open to the public. Seating at meeting will be on a first-come basis.

Metal Finishing Sector Subcommittee—July 11–12, 1995

The Common Sense Initiative Council, Metal Finishing Sector Subcommittee (CSIC–MFS) is convening an open meeting on July 11 and 12, 1995. The meeting on July 11, 1995 is scheduled from approximately 9:30 a.m. until about 4:00 p.m., and from 8:30 until 4:00 p.m. on July 12, 1995. The meetings will be held at the Holiday Inn Crown Plaza, 610 Hilton Boulevard, Ann Arbor, MI 48108. The phone number of the hotel is (313) 761–7800.

The purpose of the Subcommittee meeting is to continue the development of project proposals and workplans for individual projects.

Projects are being developed in each of the five current workgroups of the Metal Finishing sector: (1) key regulatory and reporting issues for this industry; (2) targeted research and technology diffusion programs; (3) promoting improved performance by mid-level and upper tier firms, (4) environmentally responsible transition of old, outdated facilities; and (5) compliance assistance and enforcement programs that create a more level ''playing field'' in the industry.

Limited time will be provided for members of the public wishing to make an oral presentation or comments at the beginning of the Subcommittee meeting on July 12, 1995.

For further information on the Metal Finishing Sector Subcommittee meeting, contact Bob Benson of EPA's Office of Policy, Planning and Evaluation at (202) 260–8668.

FURTHER INFORMATION AND INSPECTION OF CSIC DOCUMENTS: Documents relating to the above Sector Subcommittee announcement will be publicly available at the meeting. Thereafter, these documents, together with official minutes for the meeting, will be available for public inspection in room 2417 Mall of EPA Headquarters, Common Sense Initiative Program Staff, 401 M Street, S.W., Washington, D.C. 20460, phone (202) 260–7417. CSIC information can be accessed electronically through contacting Katherine Brown at: brown.katherine@epamail.epa.gov.

Dated: June 15, 1995.

Bob Benson,

Designated Federal Officer.

[FR Doc. 95–15429 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5225–6]

Science Advisory Board; Radiation Advisory Committee (RAC) Meeting; Notification of Public Advisory Committee Meeting; Open Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Radiation Advisory Committee (RAC) of the Science Advisory Board (SAB) will

conduct an advisory review of the Agency's Environmental Radiation Ambient Monitoring System (ERAMS) in a public meeting on Thursday, July 13 and Friday, July 14, 1995. The review will take place at the Agency's National Air and Radiation Environmental Laboratory (NAREL), 540 South Morris Avenue, Montgomery, Alabama 36115–2601 [Tel. No. (334) 270–3400]. The meeting will begin at 9:00 a.m. on Thursday, July 13 and end no later than 3:00 p.m. Friday, July 14, 1995. The RAC was introduced to the topic of this review at its public meeting of May 25, 1995 in which a preliminary discussion occurred on the upcoming advisory review of the Environmental Radiation Ambient Monitoring System (ERAMS) [See **Federal Register** Vol. 60, No. 80, Wednesday, April 26, 1995, pages 20491–20492]. This meeting is open to the public, but seating is limited and available on a first come basis. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are *not* available from the SAB Office. Public drafts of SAB reports are available to the Agency and the public from the SAB office. Additional instructions about how to participate in the meeting can be obtained by calling Ms. Diana L. Pozun at (202) 260–6552 or FAX (202) 260–7118 no later than 12 noon eastern time on July 10, 1995.

The ERAMS is a continuous monitoring network operating throughout the U.S. and its territories. The basic goals of the network are to provide a means of estimating the ambient levels of radioactive pollutants in the environment, following trends in environmental radioactivity levels, and assessing the impact of fallout and other intrusions of radioactive materials. Currently, the ERAMS network is used to collect air, pasteurized milk, precipitation, surface water, and drinking water. Several thousand samples per year are collected. There are approximately 300 sampling stations across the U.S. and its territories operated on a voluntary basis primarily by state and local health agencies. The stations are distributed so as to cover each geographic region, most individual states, and major population centers.

The tentative charge to the SAB's RAC regarding the ERAMS protocol involves the following:

(1) Are the proposed objectives adequate for the refinements and redirection of ERAMS, given the priorities that emerged from the various efforts to evaluate the program and user needs?

(2) With specific emphasis on ambient monitoring, site-specific monitoring, and data dissemination, are the general approaches outlined in the Agency's submittal to the proposed objectives appropriate?

The draft documents that are the subject of this review are available from the originating EPA office (see below) and are *not* available from the SAB Office. At this time the only draft document that has been provided to the SAB's RAC at this time is background information on the ERAMS program (i.e., the ERAMS Manual, EPA 520/5–84–007, –008, –009). It is expected that additional information specifically relevant to the review will be provided to the Committee soon. To discuss technical aspects of the ERAMS program, or to obtain review and background information provided to the SAB's RAC, please contact Dr. Mary Clark, Technical Advisor, Office of Radiation and Indoor Air (ORIA), U.S. Environmental Protection Agency (6601J), 401 M Street, SW., Washington, D.C. 20460 (Tel. 202–233–9348; FAX 202–233–9651).

To simply obtain copies of the draft documents, please contact Ms. Virginia Stradford, Secretary, at (202) 233–9350, FAX (202) 233–9650. The background documents that support this review, as well as the draft documents listed above are available in the Agency's Air and Radiation Docket. Please address written inquiries as follows: USEPA, Attn: Air and Radiation Docket, Mail Stop 6102, Air, Room M1500, First Floor, Waterside Mall, 401 M Street, SW, Washington, DC 20460. The docket may be inspected from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays, in Room M1500. A reasonable fee may be charged for copies of docket materials. Inquiries regarding access to the public information docket should be directed to Ms. Lynn Johnson, ORIA Staff at (202) 233–9383.

Members of the public who wish to make a brief oral presentation at this meeting must contact Mrs. Diana L. Pozun, Staff Secretary, RAC, (tel. 202–260–6552; FAX 202–260–7118) no later than Monday, July 10, 1995, in order to have time reserved on the agenda. For a copy of the proposed agenda, please contact Ms. Pozun at the numbers given above or via the INTERNET: POZUN.DIANA@EPAMAIL.EPA.GOV. For questions regarding technical issues to be discussed, please contact Dr. K. Jack Kooyoomjian, Designated Federal Official, Science Advisory Board (1400F), US EPA, 401 M Street, SW, Washington DC 20460, tel. (202) 260–2560, FAX (202) 260–7118, or via the INTERNET: KOOYOOMJIAN.JACK@EPAMAIL.EPA.GOV. At this meeting, possible future review topics may be discussed as time permits.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than thirty minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to the meeting date (usually one week prior to the meeting), may be mailed to the committee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the committee up until the time of the meeting.

Dated: June 13, 1995.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 95–15433 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5225–5]

Interim Policy on Compliance Incentives for Small Businesses

AGENCY: Office of Enforcement and Compliance Assurance, EPA.

ACTION: Notice.

SUMMARY: The Office of Enforcement and Compliance Assurance (EPA) is issuing this *Interim Policy on Compliance Incentives for Small Businesses.* This interim Policy is intended to promote environmental compliance among small businesses by providing incentives for participation in compliance assistance programs, and encouraging the prompt correction of violations. The Policy accomplishes this in two ways: by setting forth guidelines for the Agency to reduce or waive penalties for small businesses that make good faith efforts to correct violations, and by providing guidance for States and local governments to offer these incentives.

DATES: Comments must be received on or before July 31, 1995.

ADDRESSES: Comments may be mailed to: Small Business Policy, Mail Code 2224–A, United States Environmental Protection Agency, 401 M Street, S.W., Washington D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Elliott Gilberg, 202–564–2310, Office of Compliance, Mail Code 2224–A, or

David A. Hindin, 202–564–2230, Office of Regulatory Enforcement, Mail Code 2248–A, United States Environmental Protection Agency, 401 M Street, S.W., Washington D.C. 20460.

SUPPLEMENTARY INFORMATION: Pursuant to this Interim Policy, EPA will exercise its discretion, under applicable media-specific policies, to refrain from initiating an enforcement action seeking civil penalties, or to mitigate civil penalties, whenever a small business makes a good faith effort to comply with environmental requirements and where there is no criminal behavior and no significant health, safety or environmental threat. In addition, EPA is creating special incentives for small businesses who take the initiative to identify and correct environmental violations by requesting compliance assistance from the government. In such circumstances, and provided the small business meets certain criteria set forth in the Policy, EPA will exercise its discretion to waive the entire penalty for environmental violations. Moreover, EPA will defer to state actions that are consistent with this Policy.

Dated: June 13, 1995.

Steven A. Herman,

Assistant Administrator, Office of Enforcement and Compliance Assurance, United States Environmental Protection Agency.

A. Introduction

This document sets forth the Environmental Protection Agency's Interim Policy on compliance incentives for small businesses. This Policy is one of the 25 regulatory reform initiatives announced by President Clinton on March 16, 1995, and implements, in part, the Executive Memorandum on Regulatory Reform, 60 FR 20621 (April 26, 1995).

The Executive Memorandum provides in pertinent part:

> To the extent permitted by law, each agency shall use its discretion to modify the penalties for small businesses in the following situations. Agencies shall exercise their enforcement discretion to waive the imposition of all or a portion of a penalty when the violation is corrected within a time period appropriate to the violation in question. For those violations that may take longer to correct than the period set by the agency, the agency shall use its enforcement discretion to waive up to 100 percent of the financial penalties if the amounts waived are used to bring the entity into compliance. The provisions [of this paragraph] shall apply only where there has been a good faith effort to comply with applicable regulations and the violation does not involve criminal wrongdoing or significant threat to health, safety, or the environment.

Pursuant to this Interim Policy, EPA will exercise its discretion, under applicable media-specific policies, to refrain from initiating an enforcement action seeking civil penalties, or to mitigate civil penalties, whenever a small business makes a good faith effort to comply with environmental requirements and where there is no criminal behavior and no significant health, safety or environmental threat. In addition, as announced in the package of regulatory reform initiatives, EPA is creating special incentives for small businesses who take the initiative to identify and correct environmental violations by requesting compliance assistance from the government. In such circumstances, and provided the small business meets certain other criteria set forth below, EPA will exercise its discretion to waive the entire penalty. Moreover, EPA will defer to state actions that are consistent with this Policy.

B. Background

The Clean Air Act (CAA) Amendments of 1990 require that states establish Small Business Assistance Programs (SBAPs) to provide technical and environmental compliance assistance to stationary sources. On August 12, 1994, EPA issued an enforcement response policy which provided that an authorized or delegated state program may, consistent with federal requirements, either:

(1) assess no penalties against small businesses that voluntarily seek compliance assistance and correct violations revealed as a result of compliance assistance within a limited period of time; or

(2) keep confidential information that identifies the names and locations of specific small businesses with violations revealed through compliance assistance, where the SBAP is independent of the state enforcement program.

In a further effort to assist small businesses to comply with environmental regulations, and to achieve health, safety, and environmental benefits, the Agency is adopting a similar policy for water, toxics, hazardous waste, and other media programs. This interim Policy sets forth the Agency's implementation of the Executive Memorandum.

C. Purpose

This interim Policy is intended to promote environmental compliance among small businesses by providing incentives for participation in compliance assistance programs, and encouraging the prompt correction of violations. The Policy accomplishes this in two ways: by setting forth a settlement penalty Policy that rewards such behavior, and by providing guidance for States and local governments to offer these incentives.

EPA is committed to a strong enforcement and compliance assurance program as a means to protect human health and the environment. We expect this Policy to encourage greater participation in compliance assistance programs that offer services to small businesses (referred to generically as SBAPs in this Policy). The Policy will allow greater openness among SBAPs and specific facilities, the small business community in general, and other federal and state officials. It will promote the sharing of information on pollution prevention measures, cost effective means of compliance and other valuable compliance-related activities with and among the regulated community. Application of the policy to all media programs should encourage small businesses to look for ''whole facility'' approaches to environmental compliance. Ultimately, by bringing many small businesses into compliance, this Policy will enhance the quality of our air, water, and land.′

Measuring the success of compliance assistance programs is a critical component of EPA's ability to assess the results of compliance and enforcement activities. EPA will work with States to evaluate the effectiveness of this Policy and, in 1997, EPA will consider whether this Policy should be continued, modified or discontinued.

D. Applicability

This Policy applies to facilities owned by small businesses as defined here. A small business is a person, corporation, partnership, or other entity who employs 100 or fewer individuals (on a companywide basis). This definition is a simplified version of the CAA § 507 definition of small business. On balance, EPA determined that a single definition would make implementation of this Policy simple and would allow for consistent application of the Policy in a multimedia context.

This interim policy is effective immediately. This Policy applies to all civil judicial and administrative enforcement actions taken under the authority of the environmental statutes and regulations that EPA administers, except for corrective action programs and the Public Water System Supervision Program under the Safe Drinking Water Act.[1] This Policy

[1] This Policy does not apply to corrective action programs (such as CERCLA, RCRA § 7003, and

applies to all such actions filed after the effective date of this Policy, and to all pending cases in which the government has not reached agreement in principle with the alleged violator on the amount of the civil penalty.

This Policy sets forth how the Agency expects to exercise its enforcement discretion in deciding on an appropriate enforcement response and determining an appropriate civil settlement penalty for violations by small businesses. This Policy is to be used for settlement purposes and is not intended for use in pleading, or at hearing or trial. To the extent that this Policy may differ from the terms of applicable enforcement response policies under media-specific programs, this document supersedes those policies. This Policy supplements, but does not supplant the August 12, 1994 *Enforcement Response Policy for Treatment of Information Obtained Through Clean Air Act Section 507 Small Business Assistance Programs.*

E. Criteria for Civil Penalty Mitigation

EPA will eliminate or mitigate its settlement penalty demands against small businesses based on the following criteria:

(1) For purposes of sections F(1) and F(2), *the small business has made a good faith effort to comply with applicable environmental requirements as demonstrated by receiving compliance assistance* from a non-confidential government or government supported program that offers services to small businesses (such as a SBAP or state university), and the violations are detected during the compliance assistance.[2]

Good faith does not exist if an agency specifically offered a compliance assistance program concerning the relevant regulated activities to the business and it failed to participate in such program.

(2) *This is the small business's first violation of this requirement.* This Policy applies to businesses that have not previously been subject to a warning letter, notice of violation, field citation, or other enforcement action by a government agency for a violation of that requirement within the past five years. If a business has been subject to multiple enforcement actions for violations of environmental requirements in the past five years, this Policy does not apply even if this is the first violation of this particular requirement.

(3) The policy does not apply if:

(a) The violation has caused actual serious harm to public health, safety, or the environment; or

(b) The violation may present an imminent and substantial endangerment to public health or the environment; or

(c) The violation presents a significant health, safety or environmental threat (e.g., violations involving hazardous or toxic substances may present such threats).

(4) *The violation does not involve criminal conduct.*

(5) *The business corrects the violation within the corrections period set forth below.*

Small businesses are expected to remedy the violations within the shortest practicable period of time. Small businesses may take up to 90 days following detection of the violation to correct the violation, or to take substantial steps to correct the violations (e.g., apply for necessary permits, secure financing, order equipment). For violations that cannot be corrected within 90 days, the correction period may be extended for an additional period not to exceed 90 days, so long as the business enters into a written agreement that sets forth the additional correction period and any additional steps to be undertaken by the business to achieve compliance. The schedule may extend for an additional period of 180 days, *i.e.*, up to a period of one year from the date the violation is detected, only if necessary where the small business corrects the violation by implementing pollution prevention measures. Correcting the violation includes remediating any environmental harm associated with the violation.[3] Any corrections period longer than 180 days should be incorporated into an enforceable order. The requirements of the correction period should be made clear to the small business prior to offering compliance assistance.

F. Penalty Mitigation Guidelines

EPA will exercise its enforcement discretion to eliminate or mitigate civil settlement penalties as follows.

1. EPA will eliminate the civil settlement penalty in any enforcement action if a small business satisfies all of the criteria in section E.

2. If the small business meets all of the criteria, except it needs a longer corrections period than provided by criterion 5 (i.e., more than 180 days for non-pollution prevention remedies, or 360 days for pollution prevention remedies), EPA will waive up to 100% of the gravity component of the penalty, but may seek the full amount of any economic benefit associated with the violations.[4]

3. If a small business has not met all the criteria above, but has otherwise made a good faith effort to comply, EPA has discretion, pursuant to its applicable policies, to refrain from filing an enforcement action seeking civil penalties or to mitigate its demand for penalties to the maximum extent appropriate. These policies generally recognize good faith efforts to comply and allow for mitigation of the penalty where there is a documented inability to pay all or a portion of the penalty, thereby placing emphasis on enabling the small business to finance compliance.

G. Other Factors

To ensure that this Policy enhances and does not compromise public health and the environment, the following conditions apply:

1. Violations detected through federal, state, or local enforcement inspections or reported to an agency as required by applicable regulations or permits remain fully enforceable.

2. A business is subject to all applicable enforcement response policies (which may include discretion whether or not to take formal enforcement action) for all violations that had been detected through compliance assistance and were not remedied within the corrections period. The penalty in such action may include the time period before and during the correction period.

3. A business's good faith efforts to correct violations detected during compliance assistance should be considered as a mitigating factor in determining an appropriate enforcement response or penalty in a subsequent enforcement action. However, a State's or EPA's actions in providing

SDWA § 1431) because these programs are primarily remedial in nature and generally do not seek penalties. This Policy does not apply to the Public Water System Supervision Program because EPA is developing another policy which addresses compliance by small communities.

[2] If the compliance or technical assistance program keeps the information obtained confidential (i.e., does not share or disclose facility specific information on compliance status with a regulatory agency), this Policy does not apply. However, if a small business wishes to obtain a corrections period after receiving compliance assistance from a confidential program, the business need only disclose the violations to the appropriate regulatory agency pursuant to criterion 1 and comply with the other provisions of this Policy.

[3] If significant efforts will be required to remediate the harm, criterion 3 is likely not to have been satisfied.

[4] In determining how much of the gravity component of the penalty is appropriate, EPA should consider the nature of the violations, the duration of the violations, the environmental or public health impacts of the violations, good faith efforts by the small business to promptly remedy the violation, and the facility's overall record of compliance with environmental requirements.

compliance assistance is not a legal defense in any enforcement action. This Policy does not limit EPA or a state's discretion to use information on violations revealed through compliance assistance as evidence in subsequent enforcement actions.

H. Applicability To States

EPA recognizes that states are partners in enforcement and compliance assurance. Therefore, EPA will defer to state actions in delegated or approved programs that are generally consistent with the guidelines set forth in this Policy.

This Policy does not require SBAPs to provide to EPA information that identifies the names or locations of specific businesses that are found to be in violation through compliance assistance. EPA recommends, however, that whenever an agency provides a correction period to a small business, the agency notify the appropriate EPA Region or state of its action, to assure that federal and state enforcement responses to the identified violations are consistent. A state program that offers confidentiality may not also offer a corrections period for the same violations (see footnote 2).[5]

In developing this Policy, EPA balanced three primary considerations. First, the Agency is seeking to provide States with ample opportunity to adopt innovative approaches to environmental compliance. Thus, the Policy provides the parameters within which States have flexibility to tailor SBAPs to their needs.

Second, EPA recognizes that participation in SBAPs by individual businesses is typically voluntary. Assistance is provided generally upon request. Thus, the Agency is seeking to assure states of the ability to provide incentives that will encourage many small businesses to participate in SBAPs.

Third, the environmental statutes covered by this Policy generally require, as a condition of delegation or authorization, that programs be consistent with Federal requirements and that states have the authority to take appropriate enforcement action with respect to violations.[6] Thus, EPA has an obligation to ensure that state SBAPs are structured so as to maintain an appropriate level of enforcement authority within delegated or authorized state programs. The Agency believes this Policy will allow states sufficient latitude to use an appropriate combination of delegated state enforcement authority and compliance assistance activity to improve compliance in the small business community.

[FR Doc. 95–15435 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–P

[5] The CAA § 507 policy establishes criteria for EPA approval of SBAPs in State Implementation Plans to satisfy the mandate in the CAA, and addresses confidential assistance in that context.

[6] For example, the Resource Conservation and Recovery Act provides that the Administrator may authorize any State to administer and enforce the Act unless he finds, among other things, that ''such program does not provide adequate enforcement of compliance with the requirements of'' the Act. 42 U.S.C. 6926(b).

[FRL–5226–6]

Proposed Settlement Agreement, Clean Air Act; Petition for Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), notice is hereby given of a proposed settlement agreement in the following cases: *American Petroleum Institute* v. *U.S. Environmental Protection Agency*, No. 94–1138 (D.C. Cir.); *Texaco, Inc. and Star Enterprises* v. *U.S. Environmental Protection Agency*, No. 94–1143 (D.C. Cir.) (consolidated cases). These petitions for review were filed under § 307(b) of the Act, 42 U.S.C. 7607(b), contesting various aspects of the regulations issued by EPA on December 15, 1993 for reformulated and conventional gasoline.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed agreement if the comments disclose facts or circumstances that indicate that such agreement is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

A copy of the proposed settlement agreement is available from Phyllis J. Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–7606. Written comments should be sent to John T. Hannon, Esq. at the above address and must be submitted on or before July 24, 1995.

Dated: June 14, 1995.

Jean C. Nelson,

General Counsel.

[FR Doc. 95–15436 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[ET Docket No. 94–32; DA 95–1365]

In-Flight Phone Corp.; Allocation of Spectrum Below 5 GHz Transferred From Government Use

AGENCY: Federal Communications Commission.

ACTION: Public notice.

SUMMARY: This Public Notice solicits comment on a pioneer's preference request filed by In-Flight Phone Corp. (In-Flight). The action is taken in response to a filing by In-Flight.

DATES: Comments are due July 3, 1995; reply comments are due July 13, 1995.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 776–1622.

SUPPLEMENTARY INFORMATION: This is the text of the Commission's Public Notice in GEN Docket No. 94–32, released June 16, 1995. The pioneer's preference request filed by In-Flight is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington D.C. 20037.

Comment Sought on In-Flight Phone Corp. Pioneer's Preference Request

On March 16, 1995, In-Flight Corp. (In-Flight) filed a Petition for Declaratory Ruling (Petition) asking that its pioneer's preference (PP) Request filed in the Narrowband Personal Communications Services proceeding, ET Docket No. 92–100, now be considered in ET Docket No. 94–32, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use. The Petition was placed on Public Notice on April 28, 1994; see DA 95–967. No comments were filed on this Public Notice. On June 8, 1995, in response to the Commission's Third Report and Order in the pioneer's preference review proceeding (see ET Docket No. 93–266, FCC 95–218, released June 8, 1995), In-Flight filed a Supplement to its PP Request. In the Supplement, In-Flight asks that the

Commission issue a public notice soliciting comment on the PP Request.

In-Flight filed its PP Request in ET Docket No. 92–100 on October 30, 1992, seeking a preference in the 901–902 MHz and 940–941 MHz bands for a live ground-to-air audio news, information, and entertainment service for airline passengers. However, because the rules adopted in ET Docket No. 92–100 were not related to In-Flight's proposal, its PP Request was not acted upon by the Commission.

In May 1994, the Commission released a Notice of Inquiry (NOI) in ET Docket No. 94–32, seeking information on potential applications of 50 megahertz of transferred Federal Government spectrum; see 9 FCC Rcd 2175 and 59 FR 25589, May 17, 1994. In November 1994, a Notice of Proposed Rulemaking was released proposing the allocation of the spectrum; see 9 9 FCC Rcd 6779 and 59 FR 59393, November 17, 1994. A First Report and Order and Second Notice of Proposed Rulemaking (Second NPRM) was released in February 1995; see 10 FCC Rcd 4769 and 60 FR 13102, March 10, 1995. The Second NPRM proposes that the 4660–4685 MHz band be allocated for a General Wireless Communications Service (GWCS).

In its Petition, In-Flight argued that its PP Request should be considered in ET Docket No. 94–32 because the proposed service rules would allow it to apply for a license to provide its service in the 4660–4685 MHz band. In-Flight claimed that the service for which the preference is sought is identical in all relevant respects to the service it would provide as a GWCS licensee. In-Flight also requested that the Commission issue the recommended ruling well in advance of the August 10, 1995 statutory deadline for issuing final rules in ET Docket No. 94–32, so that the Commission would have sufficient time to decide whether to award a pioneer's preference to In-Flight.

In its Supplement, In-Flight notes that the Commission recently decided in ET Docket No. 93–266 that public notices would no longer be issued inviting comment on pioneer's preference requests—rather, such comment would be solicited in the notices of proposed rule making that propose to establish rules governing the services for which the preferences are sought; see Second Report and Order and Further Notice of Proposed Rule Making, 10 FCC Rcd 4523 (1995) and 60 FR 13396, March 13, 1995. However, In-Flight states that because an NPRM has already been issued in Docket No. 94–32, the only way the Commission can give parties an opportunity to comment on its PP Request is to issue a public notice.

We concur with In-Flight that due to the special circumstances surrounding its PP Request, issuance of a public notice is appropriate in this case. Accordingly, we are assigning file number PP–88 to the Request and invite comment on it and the Supplement. Comments must reference both PP–88 and ET Docket No. 94–32 on the cover page. Comments are due July 3, 1995, and reply comments are due July 13, 1995. We note that In-Flight's PP Request has been formally opposed. Accordingly, the PP Request constitutes a restricted Commission proceeding in which *ex parte* presentations are prohibited; see 47 CFR 1.1208(c).

In-Flight's PP Request, including the Supplement, is available for inspection in the FCC Reference Center, Room 239, 1919 M Street N.W., Washington, DC during regular business hours. This material may also be purchased from the Commission's duplication contractor, International Transcription Service, Inc., 2100 M Street, NW, Suite 140, Washington, DC 20036, (202) 857–3800. For further information, contact Thomas Derenge or Rodney Small in the Office of Engineering and Technology, (202) 739–0703 or (202) 776–1622, respectively.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–15395 Filed 6–22–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1053–DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA–1053–DR), dated May 30, 1995, and related determinations.

EFFECTIVE DATE: June 15, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 15, 1995.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–15455 Filed 6–22–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1053–DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois, (FEMA–1053–DR), dated May 30, 1995, and related determinations.

EFFECTIVE DATE: June 16, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Illinois dated May 30, 1995, is hereby amended to include Individual Assistance and Public Assistance in the following areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 30, 1995:

Madison and St. Clair for Public Assistance (already designated for Individual Assistance).

Alexander, Brown, Calhoun, Cass, Greene, Jackson, Jersey, Mason, Monroe, Morgan, Pike, Pulaski, Randolph, Schuyler, Scott, and Union for Public Assistance and Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 95–15456 Filed 6–22–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1055–DR]

Kentucky; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Kentucky (FEMA–1055–DR), dated June 13, 1995, and related determinations.

EFFECTIVE DATE: June 13, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a latter dated June 13, 1995, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky, resulting from tornadoes, severe wind and hail storms, torrential rain and flooding on May 13–19, 1995, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Jose Bravo of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Kentucky to have been affected adversely by this declared major disaster:

Mercer County for Individual Assistance and Hazard Mitigation.

Bath, Clark, Hardin, Jessamine, Meade, Montgomery, and Rowan Counties for Individual Assistance, Public Assistance and Hazard Mitigation.

Adair, Boyd, Breathitt, Breckinridge, Carter, Casey, Elliot, Floyd, Green, Johnson, Lawrence, Magoffin, Owsley, Pulaski, Russell, and Taylor Counties for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 95–15454 Filed 6–22–95; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Guaranty Bancshares, Inc.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95–14498) published on page 31310 of the issue for Wednesday, June 14, 1995.

Under the Federal Reserve Bank of Kansas City heading, the entry for Guaranty Bancshares, Inc., is revised to read as follows:

1. Guaranty Bancshares, Inc., Oklahoma City, Oklahoma; to engage *de novo* through its subsidiary, First Oklahoma Finance Company, Inc., Bethany, Oklahoma, in additional activities of consumer finance pursuant to § 225.25(b)(1)(i) and credit-related insurance, pursuant to § 225.25(b)(8)(i)(A) and (B) of the Board's Regulation Y.

Comments on this application must be received by June 28, 1995.

Board of Governors of the Federal Reserve System, June 19, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–15411 Filed 6–22–95; 8:45 am]

BILLING CODE 6210–01–F

Fredric R. LeVarge; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 7, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Fredric R. LeVarge, Tampa, Florida; to acquire an additional 10.2 percent, for a total of 19.5 percent of the voting shares of City Financial Corporation of Tampa, Tampa, Florida, and thereby indirectly acquire City First Bank, Tampa, Florida.

Board of Governors of the Federal Reserve System, June 19, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–15412 Filed 6–22–95; 8:45 am]

BILLING CODE 6210–01–F

Regions Financial Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications

must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than July 7, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Regions Financial Corporation, Birmingham, Alabama; to acquire Interstate Billing Service, Inc., Decatur, Alabama, and thereby engage in the business of purchasing accounts receivable at a discount from automobile dealerships and trucking/freight companies, pursuant to § 225.25(b)(1)(v) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. National Commerce Bancorporation, Memphis, Tennessee; to acquire Transplatinum Service Corp., Nashville, Tennessee, and thereby engage in providing data processing and data transmission services (including data processing and transmission hardware, software, documentation and operating personnel) and data bases, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire through its subsidiary, Norwest Investment Services, Inc., Minneapolis, Minnesota, the brokerage business of Valley-Hi National Bank, San Antonio, Texas. The geographic scope for these activities is Texas.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. First Hawaiian, Inc., Honolulu, Hawaii; to expand the geographic scot of its subsidiary, First Hawaiian Leasing, Inc., Honolulu, Hawaii, which engages in leasing personal and real property, pursuant to § 225.25(b)(5) of the Board's Regulation Y. The geographic scope for this activity is expanded and will be conducted on a world-wide basis.

Board of Governors of the Federal Reserve System, June 19, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–15413 Filed 6–22–95; 8:45 am]

BILLING CODE 6210–01–F

SunTrust Banks, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 17, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. SunTrust Banks, Inc., Atlanta, Georgia, and Sun Banks, Inc., Orlando, Florida; to acquire 100 percent of the voting shares of Key Biscayne Bankcorp, Inc., Key Biscayne, Florida, and thereby indirectly acquire Key Biscayne Bank & Trust Company, Key Biscayne, Florida.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. DCNB Holding Company, Clear Lake, South Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of Deuel County National Bank, Clear Lake, South Dakota.

Board of Governors of the Federal Reserve System, June 19, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–15414 Filed 6–22–95; 8:45 am]

BILLING CODE 6210–01–F

Canadian Imperial Bank of Commerce, Toronto, Ontario, Canada; Notice to Engage in Nonbanking Activities

Canadian Imperial Bank of Commerce, Toronto, Ontario, Canada (Notificant), has given notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to acquire, indirectly through its subsidiary Wood Gundy Corporation, New York, New York (Company), certain assets and assume certain liabilities of The Argosy Securities Group, L.P. and The Argosy Group, L.P., both of New York, New York. Following the proposed acquisition, Notificant will continue to engage in various securities and securities-related activities described below on a nationwide basis. Notificant previously received Board approval to engage in the proposed activities through Company. *See Canadian Imperial Bank of Commerce*, 74 Federal Reserve Bulletin 571 (1988); 76 Federal Reserve Bulletin 158 (1990); and 76 Federal Reserve Bulletin 548 (1990).

Notificant proposes to continue to engage in the following activities previously authorized by the Board:

(1) Providing investment advisory services pursuant to § 225.25(b)(4) of Regulation Y (12 CFR 225.25(b)(4));

(2) providing advice on swaps and related contracts pursuant to § 225.25(b)(4)(vi)(A)(2) of Regulation Y (12 CFR 225.25(b)(4)(vi)(A)(2));

(3) providing financial advice, for example advice on mergers, divestitures, recapitalizations and loan syndications, pursuant to § 225.25(b)(4)(vi)(A)(1) of Regulation Y (12 CFR 225.25(b)(4)(vi)(A)(1)).

Notificant also proposes to continue to engage in the following activities which previously have been determined by the Board by Order to be closely related to banking.

(1) Underwriting and dealing in municipal revenue bonds, residential mortgage-related securities, consumer-receivable securities, and commercial paper.

(2) underwriting and dealing in debt securities and equity securities of all types;

(3) acting as agent, in the private placement of all types of securities; and

(4) acting as a riskless principal in the purchase and sale of all types of securities on the order of investors.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity ''which the Board, after due notice and opportunity for hearing, has

determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be proper incident thereto.'' This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, ''closely related to banking.'' Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may be reasonably be expected to produce public benefits that outweigh possible adverse effects.

Notificant maintains that the Board previously has determined that the proposed activities are ''so closely related to banking or managing or controlling banks as to be proper incident thereto.'' The Board previously has approved, by order, the proposed private placement and riskless principal activities, and Notificant has stated that it will continue to conduct the proposed activities using the same methods and subject to the prudential limitations established by the Board in its previous orders. *See J.P. Morgan & Co. Incorporated*, 76 Federal Reserve Bulletin 26 (1990); *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989).

The Board also has previously approved, by order, underwriting and dealing in, to a limited extent, all types of debt and equity securities. *See Canadian Imperial Bank of Commerce*, 76 Federal Reserve Bulletin 158 (1990); *J.P. Morgan & Co. Incorporated, et al.*, 73 Federal Reserve Bulletin 192 (1989) (1989 Section 20 Order), *aff'd sub nom. Securities Industry Association v. Board of Governors of the Federal Reserve System*, 900 F.2d 360 (D.C. Cir. 1990). Notificant has stated that it will continue to conduct the proposed underwriting and dealing activities using the same methods and procedures, and subject to the same prudential limitations established by the Board in the 1989 Section 20 Order, as modified by the *Order Approving Modifications to Section 20 Orders*, 75 Federal Reserve Bulletin 751 (1989), the *Order Approving Modifications to the Section 20 Orders*, 79 Federal Reserve Bulletin 226 (1993), and the *Supplement to Order Approving Modifications to Section 20 Orders*, 79 Federal Reserve Bulletin 360 (1993), including the Board's 10 percent revenue limitation on such activities.

Notificant also takes the position that the proposed acquisition will benefit the public. Notificant states that the expected benefits to the public include increased competition, expanded products and services, and gains in efficiency. The proposed acquisition also would allow Notificant to offer customers expanded services at competitive costs. Notificant also maintains that the proposed activities would not result in any adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the notice, and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than July 7, 1995. Any request for hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This notice may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, June 19, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-15410 Filed 6-22-95; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Telemarketing Sales Rule; Information Collection Under OMB Review

AGENCY: Federal Trade Commission (''FTC'').

ACTION: Notice of amended application to the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) for clearance of information collection requirements contained in a revised proposed trade regulation rule pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act.

SUMMARY: The FTC is seeking OMB clearance for information collection requirements contained in revised proposed regulations implementing the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101–6108 (''Telemarketing Act'' or ''the Act'').

The Telemarketing Act requires the Commission to issue a rule prohibiting deceptive and abusive telemarketing acts and practices. In accordance with the statutory directive, the Commission issued a Notice of Proposed Rulemaking on February 14, 1995 (60 FR 8313). Since that time, the Commission has made revisions to the recordkeeping and disclosure requirements contained in the initially proposed rule.

Specifically, the Commission has reviewed the public comments and has incorporated many of the suggestions received from industry on how to minimize the recordkeeping burden. The revised proposed rule requires the following records to be kept for a twenty-four month period: advertising and promotional materials, and telemarketing scripts; information regarding prize recipients and prize distribution; sales information; and information regarding employees directly involved in telephone sales. The recordkeeping provisions will be helpful in preserving evidence of compliance with the rule.

Absent the recordkeeping requirements, Commission staff believes that this is the type of information that would be retained by these entities in any event during the normal course of business because this information would be useful in resolving private, non-governmental inquiries and disputes. The definition of ''burden'' for OMB purposes excludes any effort that would be expended regardless of a regulatory requirement. 5 C.F.R. § 1320.7(b)(1). Further, the revised proposed rule clarifies that records kept in the ordinary course of business need not be duplicated or separately maintained. Thus, the only burden would be for retaining the records for an additional period of time.

Nonetheless, the Commission is increasing the estimate of burden hours imposed by the recordkeeping requirements to take into account any time necessary to develop, modify, construct, or assemble any materials or equipment. Staff estimates that approximately 40,000 industry members could be affected by these recordkeeping requirements. Staff further estimates that no more than 100 companies would find it necessary to develop, modify, construct, or assemble materials or equipment in order to comply with the proposed rule. Staff further estimates that it would take these 100 entities approximately 100 hours each during the first year of

compliance to assemble the necessary equipment, for a total of 10,000 burden hours. Staff also estimates that the companies that already have recordkeeping systems would require only one hour to comply with the proposed recordkeeping requirements, for a total burden estimate of 49,900 hours. The Commission is requesting that this figure be rounded up to 50,000 hours. A burden estimate of 50,000 hours, which is a yearly estimate, would allow approximately 100 new companies to enter the industry during each succeeding year without requiring the Commission to modify the burden estimate.

The Commission's February 14, 1995 Application to OMB did not request clearance for the various disclosure requirements contained in the proposed Telemarketing Rule. The Commission is now submitting these disclosure requirements to OMB for clearance. The primary purpose of the rule's disclosure requirements is to assist in preventing deceptive and abusive telemarketing acts or practices by ensuring that customers are informed of the purpose of the call and the terms and conditions of the potential sale.

Specifically, the revised proposed rule requires sellers or telemarketers to disclose the identity of the seller; the purpose of the call; the nature of goods or services; and that no purchase is necessary to win if a prize promotion is offered in conjunction with a sales offer of goods or services. If requested, the telemarketer must also disclose the no-purchase entry method of the prize promotion.

Staff estimates that 40,000 industry members make approximately 9 billion calls per year, or 225,000 calls per year per company. However, sections 310.6(d) and (e) provide that if an industry member chooses to solicit consumers by using advertising media other than direct mail or by using direct mail solicitations that make certain required disclosures, they are exempted from complying with other disclosures required by the rule. Because the burden of complying with written disclosures is much lower than the burden of complying with all the rule's provisions, staff estimates that at least 9,000 firms will choose to adopt marketing methods that exempt them from oral disclosure requirements. Staff estimates that it will take 7 seconds for callers to disclose the required information. Staff also estimates that at least 60% result in ''hang-ups'' before the seller or telemarketer can make all the required oral disclosures. Staff estimates that hang-up calls last for only 2 seconds. Accordingly, staff estimates that the total disclosure burden of these requirements is approximately 250 hours per firm or 7.75 million hours.

The revised proposed rule also requires additional disclosures before the customer pays for goods or services. Specifically, the sellers or telemarketers must disclose the total costs to purchase, receive, or use the offered goods or services; all material restrictions; all material terms and conditions of the seller's refund, cancellation, exchange, or repurchase policies if a representation about the policy is part of the sales offer; and that no purchase is necessary to win if a prize promotion is offered in conjunction with a sales offer of goods or services. The telemarketer must disclose the non-purchase entry method for the prize promotion. Staff estimates that approximately 10 seconds is necessary to make these required disclosures. However, these disclosures need only be made where a call results in an actual sale. Staff estimates that sales occur in approximately 6 percent of telemarketing calls. Accordingly, the estimated burden for the disclosures is 37.5 hours per firm or 1.163 million hours.

Alternately, the disclosures required before the customer pays for goods or services may be *in writing.* As discussed above, staff estimates that approximately 9,000 firms will choose to comply with this optional written disclosure requirement. Although this burden estimate is difficult to quantify, mailing campaigns appear to be much less burdensome for firms than are individual oral disclosures. Staff also finds that these disclosure requirements are closely consistent with the ordinary business practices of most members of the industry. Nonetheless, staff has no reliable data from which to conclude that there is *no* separately identifiable burden associated with this provision. Therefore, staff estimates that a typical firm will spend approximately 10 hours per year engaged in activities ensuring compliance with this provision of the rule, for an estimated burden estimate of 90,000 hours.

Total Yearly Burden

Based on these figures, staff estimates the total yearly burden of the proposed rule to be 9,053,000 hours (50,000 recordkeeping hours + 9,003,000 disclosure hours). The basis for this estimate is described in more detail in the Supporting Statement submitted with the Amended Request for OMB Review.

DATES: Comments on this application must be submitted on or before June 30, 1995.

ADDRESSES: Send comments both to Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, ATTN: Desk Officer for the Federal Trade Commission, and to the Office of the Secretary, Room 159, Federal Trade Commission, Washington, DC 20580. Copies of the submission to OMB may be obtained from the Public Reference Section, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: David M. Torok, Attorney, Bureau of Consumer Protection, Division of Marketing Practices, Federal Trade Commission, Washington, DC 20580, (202) 326–3140.

Donald S. Clark,

Secretary.

[FR Doc. 95–15186 Filed 6–21–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Title: Monthly ''FLASH'' Report of Selected AFDC Program Data.

OMB No.: 0970–0071.

Description: The information collected by use of this form is used to monitor program trends and serves as advanced indicators of program activity and costs. The affected public is comprised of State and local agencies administering AFDC programs. The forms are completed by State agencies administering AFDC programs.

Respondents: State and Local governments.

Title	Number of respondents	Number of responses per respondent	Average burden per response	Burden
Flash report	54	12	2.5	1,620

Estimated Total Annual Burden: 1,620.

Additional Information

Copies of the proposed collection may be obtained from Bob Sargis of the Division of Information Resource Management, ACF, by calling (202) 690–7275.

OMB Comment

Consideration will be given to comments and suggestions received within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street NW., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: June 20, 1995.

Roberta Katson,

Acting Director, Office of Information Resource Management.

[FR Doc. 95–15470 Filed 6–22–95; 8:45 am]

BILLING CODE 4184–01–M

Agency Information Collection Under OMB Review

Title: Job Opportunity and Basic Skills (JOBS) Participation Rate Quarterly Report.

OMB No.: 0970–0098.

Description: The ACF is required to collect monthly information on a quarterly basis to determine the Federal Financial Participation (FFP) matching rate that states are entitled to receive. Authorization for this request is granted in the Family Support Act of 1988.

Respondents: State, Local, or Tribal Govt.

Title	Number of respondents	Number of responses per respondent	Average burden per response	Burden
ACF–103	51	4	12	2448

Estimated Total Annual Burden: 2448.

Additional Information

Copies of the proposed collection may be obtained from Bob Sargis of the Division of Information Resource Management, ACF, by calling (202) 690–7275.

OMB Comment

Consideration will be given to comments and suggestions received within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: June 19, 1995.

Roberta Katson,

Acting Director, Office of Information Resource Management.

[FR Doc. 95–15471 Filed 6–22–95; 8:45 am]

BILLING CODE 4184–01–M

Office of the Secretary

Completion of Investigation

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has completed an investigation and does not find scientific misconduct in the following case:

David Plotkin, M.D., Memorial Cancer Research Foundation of Southern California: The Division of Research Investigations (DRI), Office of Research Integrity (ORI), investigated allegations that clinical trial data forms submitted from the Memorial Cancer Research Foundation of Southern California (MCRF), Los Angeles, California, contained falsified and fabricated information. The data forms were submitted to the Statistical Office of the National Surgical Adjuvant Breast and Bowel Project (NSABP) located at the University of Pittsburgh. The NSABP project at MCRF received funding from the National Cancer Institute (NCI), with Dr. David Plotkin as Principal Investigator.

In mid-April 1994, the Chicago Tribune obtained a copy of an April 1990 NSABP Audit Report that indicated there was a ''serious problem * * * with respect to the accuracy of the data reported to the NSABP'' from the MCRF. A Chicago Tribune reporter reviewed records on some subjects entered on NSABP trials at MCRF and found apparent discrepancies between reported data and medical records. Much of the questioned data was related to the B–06 clinical trial which compared lumpectomy (with or without radiation therapy) to total mastectomy for the treatment of breast cancer.

ORI reviewed records and data on 59 patients reported to NSABP between 1973 and 1994 and did not find falsification, fabrication, or deliberate misrepresentation on the part of Dr. Plotkin or his staff. ORI found that many of the discrepancies originally identified by the NSABP and the Chicago Tribune were the result of a review of incomplete records, honest error on the part of one or more of the participating parties, or differences in interpretations or judgments of the facts.

FOR FURTHER INFORMATION, CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 301–443–5330.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 95–15397 Filed 6–22–95; 8:45 am]

BILLING CODE 4160–17–P

Public Health Service

Food and Drug Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 56 FR 29484, June 27, 1991, as amended most recently in pertinent part at 59 FR 17106, April 11, 1994, is amended to reflect the following reorganization in the Food and Drug Administration (FDA).

The Office of Management in the Office of Management and Systems is being reorganized to reduce the number of components reporting to the Associate Commissioner for Management from eight to four. The position of Deputy Associate Commissioner for Management is being abolished and additional reductions in subordinate substructures are expected to further reduce the number of supervisory positions to meet Agency streamlining goals. A new Office of Facilities, Acquisitions, and Central Services and an Office of Human Resources and Management Services, and an Executive Management Staff are being established. The current Office of Human Resources Management, Office of Facilities and Administrative Management, and the Office of Contracts and Grants Management will be abolished and their divisions will report directly to the two new offices. The structure of the Office of Financial Management will not change.

Under section HF–B, Organization:

1. Delete subparagraphs Office of Human Resources Management (HFA77), Office of Contracts and Grants Management (HFA78), and Office of Facilities and Administrative Management (HFA75) under paragraph Office of Management (HFA7), in their entirety.

2. Insert the following new subparagraphs under paragraph Office of Management (HFA7).

Office of Facilities, Acquisitions, and Central Services (HFA73). Provides leadership and direction regarding all aspects of facilities management nationwide.

Provides leadership and direction regarding all administrative management support services including personal property management and accountability, graphic arts, and files and records.

Manages and coordinates all aspects of the Agency's long range facilities planning.

Serves as the Agency focal point for developing, coordinating, and implementing FDA policies and procedures pertaining to acquisitions, interagency agreements, technology transfer and grants management; coordinates all administrative matters related to acquisitions, grants, cooperative agreements, interagency agreements, memoranda of understanding and technology transfer.

Office of Human Resources and Management Services (HFA79). Provides leadership and direction regarding all aspects of Agency human resources management including employment, recruitment, compensation and benefits, classification, employee relations, training, career development, and executive services.

Provides leadership and direction regarding all aspects of the Agency's management, organizational and delegational studies, processes, and policies.

Provides leadership and direction regarding all conflicts of interest and employee associations with regulated industries, reviews financial interests including outside activities of FDA employees, decides conflict of interest issues, and counsels and trains employees on the avoidance of conflicts of interests.

Executive Management Staff (HFA7A). Advises the Commissioner, Deputy Commissioners, and other senior managers in regard to administrative management matters for their components.

Provides a focal point for administrative activities for the Office of the Commissioner, the offices of the Deputy Commissioners, and the Office of Management.

Develops, coordinates, and facilitates various administrative processes such as personnel, procurement, training, travel, and other pertinent areas as necessary.

Establishes and maintains liaison with administrative officers throughout the serviced components to keep abreast with current issues.

3. Prior Delegations of Authority. Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors.

Dated: June 9, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–15358 Filed 6–22–95; 8:45 am]

BILLING CODE 4160–01–M

Food and Drug Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3865, February 25, 1970, and 56 FR 29484, June 27, 1991, as amended most recently in pertinent part at 58 FR 45111, August 26, 1993) is amended to reflect the establishment of the Office of Science, in the Office of Operations, Food and Drug Administration (FDA). FDA believes that the establishment of an Office of Science in the Office of Operations will provide the necessary coordination of the integration of the Agency's scientific and operational functions.

Under section HF–B Organization:

Under the Office of Operations (HFA9), insert a new paragraph reading as follows:

Office of Science (HFA91). Advises and assists the Deputy Commissioner for Operations, the Commissioner, and other key officials on scientific issues which have an impact on policy, direction, and long-range goals.

Coordinates and provides guidance on special and overall science policy in program areas which cross major agency component lines and scientific aspects which are critical or controversial, including the agency risk assessment policy.

Represents the agency with other government agencies, state and local governments, industry, academia, consumer organizations, Congress, and national and international organizations, and the scientific community on science policy.

Serves as the focal point for overall management of scientific agency research, training, contracts, and fellowship activities.

Provides leadership and direction on scientific technological achievement in FDA.

Evaluates the adequacy of scientific resources available to the agency and initiates action as appropriate to enhance the scientific posture.

Advises the Deputy Commissioner for Operations, and Commissioner, and the Office of Management and Systems on scientific facilities and participates with

other agency components in planning such facilities.

Provides leadership to agency components in the identification, recruitment, and retention of top level scientists to fill vacancies for key positions.

Assist in overseeing quality assurance of FDA-operated laboratories.

Under Section HF–D, Delegation of Authority. Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to officers or employees of the affected components in effect prior to this date shall continue in effect in them in their successors.

Dated: June 9, 1995

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–15357 Filed 6–22–95; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of July 1995:

Name: Advisory Committee on Infant Mortality.

Date and time: July 20–21, 1995, 9:00 a.m.

Place: Hyatt Regency Bethesda Hotel, 1 Bethesda Metro, Bethesda, MD.

The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary on the following: Department programs which are directed at reducing infant mortality and improving the health status of pregnant women and infants; how best to coordinate the variety of Federal, State, local and private programs and efforts that are designed to deal with the health and social problems impacting on infant mortality; and the implementation of the Healthy Start initiative and infant mortality objectives from *Healthy People: 2000: National Health Promotion and Disease Prevention Objectives.*

Agenda: Topics that will be discussed include: Updates on the Healthy Start Program; Prenatal Care Issues; Early Postpartum Discharge; Unintended Pregnancy, Newborn Screening; and swearing in of new Committee members.

Anyone requiring information regarding the Committee should contact Dr. Peter van Dyck, Executive Secretary, Advisory Committee on Infant Mortality, Health Resources and Services Administration, Room 18–20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2204.

Persons interested in attending any portion of the meeting or having questions regarding the meeting should contact Ms. Kerry P. Nesseler, Maternal and Child Health Bureau, Health Resources and Services Administration, Telephone (301) 443–2204.

Agenda Items are subject to change as priorities dictate.

Dated: June 20, 1995.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 95–15476 Filed 6–22–95; 8:45 am]

BILLING CODE 4160–15–P

Office of Refugee Resettlement

Availability of Discretionary Grants to Promote Community Development in Sites With Significant Refugee Populations in Order to Increase Economic Independence Among Refugees and Their Families

AGENCY: Office of Refugee Resettlement (ORR), HHS.

SUMMARY: This program announcement governs the availability of funds and award procedures for approximately $1,000,000 in FY 1995 discretionary grants for technical assistance and operating costs to promote community development in sites with significant refugee [1] populations in order to increase economic independence among refugees and their families. This announcement is soliciting applications for cooperative agreement project periods up to three years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period, but within the three-year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress by the grantee, and a determination that continued funding would be in the best interest of the Government.

[1] In addition to persons who meet all requirements of 45 CFR, 400.43, eligibility for refugee social services also includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Pub. L. 100–461), 1990 (Pub. L. 101–167), and 1991 (Pub. L. 101–513). For convenience, the term ''refugee'' is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise.

Available Funds

In FY 1995, ORR expects to make available approximately $1,000,000 for one award in this program area. The amount in subsequent years will depend upon the availability of funding, need, and the best interests of the Government.

The Director reserves the right to award more or less than the funds described above depending upon the quality of the applications or such other circumstances as may be deemed to be in the best interest of the Government.

Authorization

Authority for this activity is contained in Section 412(c)(1)(A) of the Immigration and Nationality Act, which authorizes the Director ''to make grants to, and enter into contracts with, public or private nonprofit agencies for projects specifically designed— * * * (iii) to provide where specific needs have been shown and recognized by the Director, health (including mental health) services, social services, educational, and other services.''

Application Submission

Forms and instructions for submitting an application are included with this announcement which may be reproduced. Additional copies also may be obtained by contacting the Office of Refugee Resettlement at the address below. An original and two copies of all applications should be submitted to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade SW, Sixth Floor, Washington, DC 20447 Or hand delivered to: Division of Discretionary Grants, 901 D St. SW, 6th Fl. ACF Guard Station, Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Ms. Anna Mary Portz, Office of Refugee Resettlement, 370 L'Enfant Promenade SW., Washington, D.C. 20447, Telephone (202) 401–1196, email: aportz@acf.dhhs.gov.

Purpose and Scope

The Refugee Act of 1980 mandates two broad goals: (1) To assist refugees in achieving self-sufficiency as early as possible after arrival, and (2) to provide long-term effective resettlement. Since 1975, almost two million refugees have been resettled in communities throughout the United States. While many refugees have achieved economic and social self-sufficiency, some continue to face poverty, joblessness, under-employment and lack of access to opportunities. ORR recognizes that in

order for refugees to be effectively resettled, refugees need to have continuing access to mainstream services and resources beyond ORR funds; and refugee communities must be strengthened so that they can provide their own members with a long-term economic and social safety net.

The purpose of this announcement is to solicit applications for a project to strengthen refugee community-based organizations (CBOs) which are already engaged in community development in sites where significant refugee populations currently reside. A strong CBO is able to tap into a community's desire for self-help, improve services, nurture leaders, raise money from a variety of sources within and outside the community, expand housing and economic opportunities and, at the same time, remain accountable to the community. Most importantly, these organizations give refugees a sense of hope about their community's future.

Strong refugee CBOs are critical building blocks for effective resettlement. Such organizations can foster long-term community development—the process by which refugee communities identify their own needs and wants, mobilize resources, and develop and carry out their own strategies—in order to improve their own communities.

The successful applicant to this notice will be expected to do three things:

(1) Design and implement a comprehensive strategy which will increase the organizational capacity of a certain number of refugee CBOs so that these organizations can promote effective, long-term development of their communities

(2) Provide limited core funding to this group of CBOs so that they can devote specific staff resources to a sustained implementation of their respective organizational and community development plans; and,

(3) Conduct a select number of activities, such as workshops or peer-to-peer assistance, for the purpose of providing broad technical assistance in community and organizational development to additional refugee CBOs which are not selected for participation in items 1 and 2 described above.

ORR will enter into a cooperative agreement with the successful applicant(s) in order to jointly develop the technical assistance procedures and project schedules. ORR will also provide guidance on selection of participating refugee CBOs and service and monitoring protocols.

Eligible Applicants

Eligible applicants are public or private nonprofit organizations. If an applicant represents a consortium (that is, the applicant includes other types of agencies among its membership), the single organization identified to be the grant recipient with primary administrative and fiscal responsibilities must be a nonprofit organization.

Application Content

All applications must be submitted on Standard Form (SF) 424 Parts I through III. A narrative project description constitutes Part IV and must not exceed 30 pages (typewritten, double spaced on standard, letter-size paper) plus a maximum of 20 pages of appended material. In the event that the project description and/or supplementary material exceed the page limitations, only the first 30 pages of the project description (if single-spaced, only the first 15 pages), and the first 20 pages of the supplementary material, will be considered in the review process. The limitation should be considered as a maximum, and not necessarily a goal to be achieved.

Part IV should contain the following sections:

A. A discussion of the specific criteria to be used in participant selection, and the community development needs to be addressed by this project. ORR recognizes that concentrated planning has to occur at all stages in the design and implementation of such a project. Part of this planning should involve detailed consideration of the priority criteria for determination of which ethnic CBOs will be invited to participate with the applicant technical assistance provider in proposed activities 1 and 2 referenced in the section titled Purpose and Scope.

ORR suggests the following criteria for refugee ethnic CBO participants to be served by the grantee. Agencies served should be viable nonprofit organizations with IRS 501(c)(3) status. Organizational missions should provide a commitment to community accountability and grassroots democracy.

These CBOs should have staff and an actively involved broad-based board. Such organizations should reflect the community-responsiveness, decision-making, and oversight role of the Board.

Applicants should discuss how they would identify organizations with these respective characteristics, and suggest other criteria they consider appropriate to qualify for receipt of services funded under this grant. Applications should include examples of appropriate CBOs for participation. (Final selection of participating CBOs will require ORR concurrence under the terms of the Cooperative Agreement.)

B. A description of the applicant's approach to community development and how the applicant determines the type of technical assistance that is required. A discussion of the perceived strengths and obstacles in promoting effective refugee community development and how the applicant can incorporate the strengths in its approach. An analysis of how the strategies proposed would enhance community development for refugees, indicating specifically how these services can be applied and how the refugee communities selected can develop constituency support. If the proposal was developed by a consortium or other combination of entities, the role of each must be detailed.

C. A description of the anticipated one-, two-, and three-year outcomes. ORR expects at a minimum that during the project period a certain number of refugee community-based organizations will exhibit (1) significant progress toward a stabilized, multiple-source income base appropriately related to the economic forces in the local community; (2) outreach and accountability to multiple strata of the local refugee community demonstrated inter alia by constituency-contributed financial support; (3) a track record of advocacy activities and relevant organizational collaboration; and if appropriate, (4) a demonstrated resettlement-related service provision or refugee representation capacity.

D. A description of the applicant's qualifications to carry out the proposed activities, particularly descriptions of relevant previous experience emphasizing experience with differing cultural groups. Applications should include names and addresses of at least three organizations for whom the applicant has previously provided similar services, as well as a brief outline of the measurable outcomes achieved for each. The applicant should also include resumes of key staff proposed to work for the applicant in the implementation of this grant, if awarded. (Applicants which cannot document experience in technical assistance similar to that required herein will not be considered.)

E. A description of the proposed activities based on an analysis of refugee ethnic community-based organizational needs and available resources, as necessary to address the development of the refugee community. Applicants should provide a detailed workplan of

the steps and activities proposed to carry out the objectives of the project, if funded, including a timetable for implementation. ORR anticipates that such activities may include, but are not limited to:

- Intensive, individually tailored technical assistance to a certain number of refugee ethnic community-based organizations in a limited number of sites;
- General community development assistance (i.e. grassroots democracy and organizing, leadership training, coalition building, resource development) for a broad audience of refugee community-based organizations;
- Facilitation of peer to peer consultation among community-based organizations; and
- Development and applied testing of a refugee appropriate model design or curricula for these activities.

F. A line-item budget with narrative justification for each line which correlates with and/or refers to the workplan.

Application Review Criteria

Applications will be reviewed, scored, and ranked in accordance with the following criteria:

1. Understanding of community development demonstrated by the quality of the discussion of the criteria that would be used and how they would be applied in selecting implementation sites and participating refugee CBOs, including appropriate examples of each. (10 Points)
2. Adequacy of the applicant's community development strategy, including leveraging of other resources and recruiting mainstream service providers, and the appropriateness of this approach for refugee community organizations. (25 Points)
3. Appropriateness of the anticipated outcomes. (15 Points)
4. Qualifications of the applicant agency, including the staffing plan and qualifications of key personnel to carry out the proposed activities. (25 Points)
5. Adequacy and reasonableness of implementation plan. (15 points)
6. Appropriateness, cost-effectiveness, and reasonableness of the budget. (10 Points)

Administrative Requirement

A. Availability of Application Forms

All forms necessary for submission of an application, as described herein are attached to this announcement and may be reproduced.

B. Assurances and Procedures

Applicants requesting financial assistance for a non-construction project must file the Standard Form 424B, ''Assurances: Non-Construction Programs.'' Applicants must sign and return the Standard Form 424B with their applications.

The following certifications are attached: Drug-Free Workplace, Debarment, Environmental Tobacco Smoke, and Anti-Lobbying. In signing and submitting an application, the applicant should be aware that it is certifying that it will comply with the Federal requirement concerning the above-cited certifications for a drug-free workplace, debarment, and environmental tobacco smoke. By signing and submitting the applications, applicants are providing these certifications and need not mail back the certification with the applications. However, the applicant must submit a signed certification regarding Lobbying with the application.

Copies of the certifications and assurance are located at the end of this announcement.

Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, and by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

C. Closing Date

1. Applications will be considered to have met the announced deadline if they are received at the address specified in this announcement by 6:30 p.m. on July 24, 1995. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline date. (Applicants are cautioned that postmarks will not be considered as a methodology for meeting the deadline.)
2. Applications which do not meet the criteria in paragraph 1 of this section are considered late applications. The ACF shall notify each late applicant that its application will not be considered in the current competition.
3. The ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if the ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.
4. Once an application has been submitted, it is considered as final and no additional materials will be accepted by ORR. An application with an original signature and two copies is required. Applications, if mailed, should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade SW., Washington, DC 20447.

No application will be accepted by telefax. Hand delivered applications are accepted during the normal working hours of 8 a.m. to 6:30 p.m. (Eastern Daylight Time), Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor, ACF Guard Station, 901 D Street, SW., Washington, DC 20447.

The application should reference this program announcement.

Intergovernmental Review

This program is covered by Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these nineteen jurisdictions need take no action regarding Executive Order 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact

if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 6th Floor, OFM/DDG, 370 L'Enfant Promenade SW., Washington, DC 20447.

A list of Single Points of Contact for each State and Territory is included as *Appendix A* of this announcement.

Applicable Regulations

Applicable HHS regulations will be provided to grantees upon award.

Post-Award Requirements—Records and Reports

Grantees are required to file Financial Status (SF–269) on a semi-annual basis and Program Progress Reports on a quarterly basis. Funds shall be accounted for and reported upon separately from all other grant activities. Successful applicants will be given specific instructions by ACF, following the award of the grant, for reporting grant performance.

The official recipient point for all reports and business management correspondence is the Division of Discretionary Grants. The original and two copies of each report and business management correspondence shall be submitted to the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade SW., Washington, DC 20447.

The final Financial and Program Progress Reports shall be due 90 days after the project expiration date or termination of grant support.

ORR expects grantees to maintain adequate records to track and report on project outcomes and expenditures by budget line item.

The Catalog of Federal Domestic Assistance (CFDA) number assigned to this announcement is 93.576.

Dated: June 19, 1995.

Regina Lee,

Deputy Director, Office of Refugee Resettlement.

Appendix A—Executive Order 12372—State Single Points of Contact

ARIZONA
Mrs. Janice Dunn, Attn: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

ARKANSAS
Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, PO Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

CALIFORNIA
Glen Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

DELAWARE
Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

DISTRICT OF COLUMBIA
Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW, Suite 500, Washington, DC 20005, Telephone (202) 727–6551

FLORIDA
Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441

GEORGIA
Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street, SW, Atlanta, Georgia 30334, Telephone (404) 656–3855

ILLINOIS
Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

INDIANA
Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

IOWA
Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

KENTUCKY
Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

MAINE
Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

MARYLAND
Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

MASSACHUSETTS
Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

MICHIGAN
Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

MISSISSIPPI
Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

MISSOURI
Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

NEVADA
Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

NEW HAMPSHIRE
Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

NEW JERSEY
Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613
Please direct correspondence and questions to: Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025

NEW MEXICO
George Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

NEW YORK
New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

NORTH CAROLINA
Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telepone (919) 733–7232

NORTH DAKOTA
N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094

OHIO
Larry Weaver, State Single Point of Contact, State/Federal Funds

Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

RHODE ISLAND

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

SOUTH CAROLINA

Omeagie Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

TENNESSEE

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotta Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

TEXAS

Mr. Thomas Adams, Governor's Office of Budget and Planning, PO Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

UTAH

Utah State Clearinghouse, Office of Planning and Budget, Attn: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

VERMONT

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

WEST VIRGINIA

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

WISCONSIN

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, PO Box 7864, Madison, Wisconsin 53707, Telephone (608) 266–0267

WYOMING

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

GUAM

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, PO Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

NORTHERN MARIANA ISLANDS

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

PUERTO RICO

Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, PO Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

VIRGIN ISLANDS

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct correspondence to: Linda Clarke, Telephone (809) 774–0750

BILLING CODE 4184–01–P

Appendix B

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184–01–C

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Ester the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—''New'' means a new assistance award.
—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.
—''Revision'' means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b).

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in Columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

ASSURANCES—NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will

establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1583, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to the confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a–7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (Pub. L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (Pub. L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (Pub. L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with Pub. L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL _____

TITLE _____

APPLICANT ORGANIZATION _____

DATE SUBMITTED _____

BILLING CODE 4184–01–P

Appendix C

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ *if there are workplaces on file that are not identified here.*

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184–01–C

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled ''Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction.'' provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled ''Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions,'' without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Appendix E

Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly, or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for children's services and that all subgrantees shall certify accordingly.

Appendix F—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known*:

Congressional District, *if known*:

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known*:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable*: _____

8. Federal Action Number, *if known*:

9. Award Amount, *if known*:
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply)*:
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply)*:
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

[FR Doc. 95–15468 Filed 6–22–95; 8:45am]
BILLING CODE 4184–01–C

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: June 28, 1995.

Time: 1 p.m.

Place: Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Shirley H. Maltz, Grant Technical Assistant, Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, telephone: 301, 443–3857.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 24, 1995.

Time: 8:30 a.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Shirley H. Maltz, Grant Technical Assistant, Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, telephone: 301, 443–3857.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552bZ(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.

This notice is being published less than fifteen days prior to the first meeting due to the urgent need to meet timing limitations imposed by the review cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education partnership Award.)

Dated: June 19, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–15384 Filed 6–22–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency Forms Undergoing Paperwork Reduction Act Review

Each Friday the Public Health Service (PHS) publishes a list of information collection requests under review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the PHS Reports Clearance Office on (202) 690–7100.

The following requests have been submitted for review since the list was last published on June 16.

1. HRSA Competing Training Grant Application, Supplements and Related Regulations—0915–0060—Extension, no change—The Health Resources and Services Administration uses this information to determine the eligibility of applicants for awards, to calculate the amount of each award, and to judge the relative merit of application. This is a short-term extension while the Bureau of Health Professions re-evaluates its approach to the application process. Send comments to James Scanlon, Office of the Assistant Secretary for Health, Room 737–F, Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201.

	No. of respondents	No. of responses/respondents	Average burden/response
Application—reporting	2,347	1	61.25 hrs.
Statutory provisions	1,364	1	105 hrs.
Reporting in regulations	28	1.4	1 hr.
Disclosure in regulations	148	1.4	3.3 hrs.
Recordkeeping	17	1	10 hrs.

Estimated Total Annual Burden—287,852 hours.

Community Prevention Coalitions Demonstration Program Survey and Adult Community Survey—New—The purpose of the data collection is to determine how, and to what extent, Community Prevention Coalitions Demonstration grant projects, supported by the Center for Substance Abuse Prevention, are effective in reducing the incidence and prevalence of alcohol, tobacco, and other drug abuse problems. Two surveys, of 10th graders and adults, will be used. Respondents: Individuals or households. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503.

	No. of respondents	No. of responses/respondents	Average burden/response
Student survey	7,200	1	0.7 hour
Adult community survey	7,200	1	0.7 hour

Estimated Total Annual Burden—10,080 hours.

3. World Health Organization Cross-National Study of Behavior Among Youth: US Component (WHO Survey)—New—SAMHSA is the sponsor of the third cycle of the WHO Survey, U.S. Component. Youth in 6th, 8th, and 10th grades will be asked about health behaviors, attitudes and mental health, and injuries. The survey will identify the differences between youth from the U.S. and other participating nations on key indicators. The survey results will be used for policy and program development and information campaigns. Respondents: Individuals or households; Number of Respondents: 21,000; Number of Responses per Respondent: 1; Average Burden per Response: 0.75 hours; Estimated Total Annual Burden: 15,750 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503.

4. Use of Auditory Canal Thermometers in Pediatric and Family Practice Offices—New—This is a mailed survey of a sample of pediatricians and family practitioners in clinical practice to determine experience with auditory canal thermometers including device performance problems, in support of the Center for Devices regulation and monitoring of this device. Respondents: Business or other for-profit; Number of Respondents: 740; Number of Responses per Respondent: 1; Average Burden per Response: .167 hour; Estimated Total Annual Burden: 123 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503.

5. 1994 Access to Care Survey—0920–0346—Reinstatement, no change—The 1994 Access to Care Survey is a follow-up study of a sample of persons identified in the 1993 National Health Interview Survey. The objectives of the survey are to characterize experience of the general American population in obtaining medical care and provide detailed information on the nature of access problems. Respondents: Individuals or households: Number of Respondents: 8400; Number of Responses per Respondent: 1; Average Burden per Response: .43 hour; Estimated Total Annual Burden: 3600 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503.

6. A Prospective Study of Diet and Cancer in Members of the American Association of Retired Persons—New—This study will collect primary data by mail from the male and female AARP members aged 50–69 years. The study is uniquely and explicitly designed to overcome the problems of dietary homogeneity and dietary measurement error. The information is expected to elucidate the relation between diet and several major cancers. Respondents: Individuals or households; Business or other for-profit; Number of Respondents: 291,900; Number of Responses per Respondent: 1.3; Average Burden per Response: .0.4734 hour; Estimated Total Annual Burden: 179,636 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the individual designated.

Dated: June 20, 1995.

James Scanlon,

Director, Data Policy Staff, Office of the Assistant Secretary for Health and PHS, Reports Clearance Officer.

[FR Doc. 95–15416 Filed 6–22–95; 8:45 am]

BILLING CODE 4160–01–M

Substance Abuse and Mental Health Services Administration

Suspension of a Laboratory Which No Longer Meets Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, PHS, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services routinely publishes a list of laboratories in the **Federal Register** that are currently certified to meet standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29925) dated June 9, 1994. This notice informs the public that effective June 14, 1995 the following laboratory's certification is suspended: ACCU–LAB, Inc., 405 Alderson Street, Schofield, WI 54476, 800–627–8200 (formerly: Alpha Medical Laboratory, Inc., Employee Health Assurance Group, ExpressLab, Inc.)

FOR FURTHER INFORMATION CONTACT: Division of Workplace Programs, Substance Abuse and Mental Health Services Administration, Room 13A–54, Telephone: 301–443–6014, 5600 Fishers Lane, Rockville, Maryland 20857.

Michele W. Applegate,

Administrator, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–15510 Filed 6–22–95; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–1917; FR–3778–N–42]

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.

ADDRESSES: For further information, contact David Pollack, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; 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 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a

suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

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 David Pollack 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: General Services Administration: Norman C. Miller, Acting Assistant Commissioner, General Services Administration, Federal Property Resources Services, 18th and F Streets, NW, Washington, DC 20405; U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; (These are not toll-free numbers).

Dated: June 15, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 06/23/95

Suitable/Available Properties

Buildings (by State)

Knoxville Job Corps Center
621 Dale Avenue
Knoxville 37921–
Landholding Agency: GSA
Property Number: 549520005
Status: Excess
Comment: 23,445 sq. ft.; 4 stories, concrete, brick, masonry, steel structure; incs. 115,000 sq. ft. parking lot; most recent use—student housing and Job Corps Center.
GSA Number: 4–L–TN–641

North Carolina

Portion VA Reservation
Nurses Quarters
Oteen Co: Buncombe NC
Landholding Agency: GSA
Property Number: 549320006
Status: Excess
Comment: 8,752 sq. ft., 3-story stucco bldg., presence of asbestos, most recent use—educational facility.
GSA Number: 4–GR–NC–481B

Tennessee

Federal Building-Post Office
Liberty and Main Streets
Jacksboro Co: Campbell TN 37757–
Landholding Agency: GSA
Property Number: 549520006
Status: Excess
Comment: 3,967 sq. ft., 2 story, brick, steel frame; presence of asbestos; most recent use—office space/storage.
GSA Number: 4–G–TN–639

Federal Bldg.—Post Office
Main Street and Maiden Lane
Wartburg TN 37887–
Landholding Agency: GSA
Property Number: 549520008
Status: Excess
Comment: 7,603 sq. ft., 1 story, brick structure; most recent use—post office and office space for federal tenants.
GSA Number: 4–G–TN–640

Texas

USDA Subtropical Agricultural
Reserch Center
509 West 4th Street
Weslaco Co: Hidalgo TX 78557–
Landholding Agency: GSA
Property Number: 549520007
Status: Excess
Comment: 8,000 sq. ft., 1 story; most recent use—office/lab; potential utilities; needs rehab.
GSA Number: 7–A–TX–1039

Land (by State)

Florida

Jacksonville Com. Annex
U.S. Highway 17
Orange Park Co: Clay FL 32073–
Landholding Agency: GSA
Property Number: 549520013
Status: Excess
Comment: 5.35 fee acres, bldgs. gutted, road easement.
GSA Number: 4–D–FL–780

Georgia

Naval Submarines Base
Kings Bay Co: Camden GA
Landholding Agency: GSA
Property Number: 549520012
Status: Excess
Comment: 20+ acres, elementary school on site/not owned by Fed. Govt. leased to Camden County.
GSA Number: 4–N–GA–606B

Texas

Tracts 909, 954, 958, 967, 970, 971
Whitney Lake Project
Kopprell Co: Bosque TX 76652–
Landholding Agency: GSA
Property Number: 549520009
Status: Excess
Comment: 1.106 acres, maintenance of lake property.
GSA Number: 7–D–TX–0505N

Unsuitable Properties

Buildings (by State)

California

Bldg. 481
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520018
Status: Unutilized
Reason: Secured Area.

Bldg. 482
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520019
Status: Excess
Reason: Secured Area.

Bldg. 356
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520020
Status: Excess
Reason: Secured Area.

Bldg. 361
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520021
Status: Excess
Reason: Secured Area.

Bldg. 364
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520022
Status: Excess
Reason: Secured Area.

Bldg. 373
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520023
Status: Excess
Reason: Secured Area.

Bldg. 407
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520024
Status: Excess
Reason: Secured Area.

Bldg. 413
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy

Property Number: 779520025
Status: Excess
Reason: Secured Area.

Bldg. 366
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520026
Status: Unutilized
Reason: Secured Area.

Bldg. 432
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520027
Status: Excess
Reason: Secured Area.

Bldg. 372
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520028
Status: Excess
Reason: Secured Area.

Bldg. 417
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520029
Status: Excess
Reason: Secured Area.

Bldg. 422
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520030
Status: Excess
Reason: Secured Area.

Bldg. 424
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779520031
Status: Excess
Reason: Secured Area.

North Carolina

Structure RR–85
Camp Lejeune, Base Rifle Range
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779520016
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Structure SRR–86
Camp Lejeune, Base Rifle Range
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779520017
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

[FR Doc. 95–15089 Filed 6–22–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1220–00; Closure Notice No. NV–030–95–04]

Temporary Closure of Certain Public Lands in the Carson City District for Management of the 1995 Running of the V.O.R.R.A. ''Fallon 250'' Off-Highway Vehicle (OHV) Race

AGENCY: Bureau of Land Management, Nevada.

ACTION: Temporary closure of certain public lands in Churchill County, Nevada, on and adjacent to the 1995 ''Fallon 250'' race course on July 29, 1995. Access will be limited to race officials, entrants, law enforcement and emergency personal, BLM personnel monitoring the event, licensed permittee(s) and right-of-way grantees.

SUMMARY: The Carson City District Manager announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety during the official running of the 1995 ''Fallon 250'' OHV Race.

EFFECTIVE DATE: July 29, 1995.

FOR FURTHER INFORMATION CONTACT: Terry Knight, Outdoor Recreation Planner, Carson City District Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706–0638. Telephone (702) 885–6100.

SUPPLEMENTARY INFORMATION: Certain public lands in the Carson City District, Churchill County, Nevada, will be temporarily closed to public access on July 29, 1995, to protect persons, property, and public land resources on and adjacent to the 1995 ''Fallon 250'' OHV race, permit number NV–03–4–010. Specific restrictions and closure information are as follows:

1. The public lands to be closed or restricted are those lands adjacent to and including roads, trails and washes identified as the 1995 ''Fallon 250'' OHV race course. These lands are within T.17N., R.30E.; T.17N., R.31E.; T.16N., R.30E.; T.16N., R.31E.; T.16N., R.32E.; T.15N., R.31½E.; T.15N., R.32E.; and T.15N., R.33E. M.D.M. A map of the race course may be obtained from Terry Knight at the contact address. The event permittee is required to mark and monitor the race course during this closure period.

2. From 12 p.m., Saturday, July 29, 1995, to 3 a.m., Sunday, July 30, 1995, the race course and those public lands 300 feet to either side of the course are closed to the public, except for designated check points and spectator areas.

3. Areas from which spectators may view the event are confined to the start/finish area in NE¼SE¼ Section 9 and NW¼SW¼ Section 10, T.16N., R.32E., M.D.M., and check points 1, 2, 3 and 4, identified on the map of the race course. All public spectator vehicles operating within these designated areas shall maintain maximum speed of 10 MPH. Spectators shall remain in safe locations as directed by event officials or BLM personnel.

The above restrictions do not apply to race officials, law enforcement and emergency personnel, or BLM personnel monitoring the event.

Authority for closure of public lands is found in 43 CFR 8341, 43 CFR 8364 and 43 CFR 8372. Any person who fails to comply with this closure order may be subject to the penalties provided in 43 CFR 8360.7.

Dated: June 15, 1995.

James M. Phillips,

Area Manager, Lahontan Resource Area.

[FR Doc. 95–15407 Filed 6–22–95; 8:45 am]

BILLING CODE 4310–HC–M

[CO–920–95–1320–01; COC 58219]

Colorado; Notice of Invitation for Coal Exploration License Application, Mountain Coal Company

Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to Title 43, Code of Federal Regulations, Subpart 3410, members of the public are hereby invited to participate with Mountain Coal Company in a program for the exploration of unleased coal deposits owned by the United States of America in the following described lands located in Gunnison County, Colorado:

T. 13 S., R. 89 W., 6th P.M.
Sec. 16, SW¼;
Sec. 17, all;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 20, all;
Sec. 21, W½;
Sec. 28, W½;
Sec. 29, all;
Sec. 30, lots 1 to 4, E½, E½W½;
Sec. 31, lots 3 to 6, E½, E½W½;
Sec. 32, all;
Sec. 33, W½.

T. 13 S., R. 90 W., 6th P.M.
Sec. 12, lots 6 to 10, inclusive, NW¼SW¼;
Sec. 13, lots 1 to 16, inclusive;
Sec. 24, lots 1 to 16, inclusive;
Sec. 25, all;
Sec. 35, lots 1 to 16, inclusive;
Sec. 36, all.

T. 14 S., R. 89 W., 6th P.M.
Sec. 4, lots 7, 8, S½NW¼, and SW¼;

Sec. 5, lots 3 to 6, inclusive, S½N½, and S½;
Sec. 6, lots 4 to 10, inclusive, S½NE¼, SE¼NW¼, W½SW¼, and SE¼.

T. 14 S., R. 90 W., 6th P.M.
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 11, N½N½;
Sec. 12, N½N½.

The area described contains approximately 12,592.58 acres.

The application for coal exploration license is available for public inspection during normal business hours under serial number COC 58219 at the Bureau of Land Management (BLM), Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, and at the Montrose District Office, 2465 South Townsend Avenue, Montrose, Colorado 81401.

Written Notice of Intent to Participate should be addressed to the attention of the following persons and must be received by them within 30 days after publication of the Notice of Invitation in the **Federal Register**:

Karen Purvis, Solid Minerals Team, Resource Services, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215,
and
Mark W. Scanlon, Sr. Geologist, Mountain Coal Company, P.O. Box 591, Somerset, Colorado 81434.

Any party electing to participate in this program must share all costs on a pro rata basis with the applicant and with any other party or parties who elect to participate.

Dated: June 15, 1995.

Karen Purvis,

Solid Minerals Team Resource Services.

[FR Doc. 95–15364 Filed 6–22–95; 8:45 am]

BILLING CODE 4310–JB–M

[NV–930–05–1430–01; N58350]

Realty Action, Lease and Sale of Public Lands for Recreation and Public Purpose, Humboldt Co., Nevada

ACTION: Notice of Realty Action, lease and sale of public lands for Recreation and Public Purpose (R&PP) Act Application N–58350, Humboldt County, Nevada.

SUMMARY: In response to an application from the Humboldt County Board of Commissioners for a regional recreation complex, the following described land has been identified as suitable for lease and sale and will be classified for lease and sale under the R&PP Act of June 14, 1926, as amended (43 U.S.C. 869, *et seq.*):

Mount Diablo Meridian, Nevada

T. 35 N., R. 38 E., Sec. 6, Lots 1, 11, 12, 13, E½W½SW¼NW¼NE¼, E½SW¼NW¼NE¼, SE¼NW¼NE¼, E½W½W½SW¼NE¼, E½W½SW¼NE¼, E½SW¼NE¼, SE¼NE¼, S½N½N½NE¼SW¼, S½N½NE¼SW¼, S½NE¼SW¼, S½N½N½NE¼NW¼SW¼, S½N½NE¼NW¼SW¼, S½NE¼NW¼SW¼, SE¼SW¼, SE¼.

Totalling approximately 431.19 acres.

The lands are not required for Federal purposes. Disposal is consistent with the Bureau's land use plan for the area and would be in the public's interest.

FOR FURTHER INFORMATION CONTACT: Ken Detweiler, Realty Specialist, 705 East 4th Street, Winnemucca, NV 89445, telephone (702) 623–1500.

SUPPLEMENTARY INFORMATION: The public lands are being offered to the Humboldt County Board of Commissioners for a regional recreation complex. The complex would include an eighteen hole championship golf course, equestrian center, park, little league/softball fields, multi-purpose field, and associated maintenance facilities.

The lease and/or patent, when issued will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. All mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. Those rights for transmission line purposes granted to Sierra Pacific Power Company by Rights-of-way NEV–042767, NEV–057840, N–46291, N–52751, and N–59698.

2. Those rights for road purposes granted to Humboldt County under Right-of-way N–37919.

3. Those rights for a bicycle path granted to Humboldt County under Right-of-way N–41637.

4. Those rights for electric substation purposes granted to Sierra Pacific Power Company under Right-of-way N–46290.

5. Those rights granted to the Nevada Department of Transportation for Grass Valley Road under Highway Easement Deed N–58306.

6. An easement 30 feet in width along the north and east boundaries of Lot 1, the east boundary of the SE¼NE¼ and the SE¼, and the south boundary of the SE¼ and the SE¼SW¼ and Lot 11, for road and public utilities purposes to ensure continued ingress and egress to adjacent lands.

Upon publication of this notice in the **Federal Register**, the lands, except Lot 13, will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws. Lot 13 will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and sale under the Federal Land Policy and Management Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register** (August 7, 1995), interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Winnemucca District Office, 705 East 4th Street, Winnemucca, Nevada 89445.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a Regional Recreation Complex. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a regional recreation complex.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register** (August 22, 1995).

Dated: June 16, 1995.

Ron Wenker,

District Manager, Winnemucca.

[FR Doc. 95–15361 Filed 6–22–95; 8:45 am]

BILLING CODE 4310–HC–P

[NM017–1430–01; NMNM 87007]

Realty Action—Recreation and Public Purpose (R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice is to advise that the following public lands in Sandoval County, New Mexico, have been examined and found suitable for classification for conveyance to the Torreon Navajo Mission/Dunkard Brethern Church under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*) at not less than the appraised fair market value (FMV) of $2,000. The Torreon Navajo Mission/Dunkard Brethern Church proposes to use the land for cemetery purposes.

New Mexico Principal Meridian

T. 18 N., R. 3 W., sec. 8, N½SW¼SE¼SW¼, W½SW¼SW¼SE¼SW¼ and E½SE¼SW¼SE¼SW¼.

The area described contains 7.500 acres.

The lands would not be leased prior to being patented to the Torreon Navajo Mission/Dunkard Brethern Church. A patent under the Recreation and Public Purpose Act is consistent with current BLM land use planning and would be in the public interest. The lands are not needed for Federal purposes.

The patent, when issued, will be subject to the following terms, conditions and reservations.

1. Provisions of the R&PP Act and to all applicable Regulations of the Secretary of the Interior.

2. A right-of-way for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and such deposits from the same under applicable law and such, regulations as the Secretary of the Interior may prescribe.

4. Those rights for a pipeline granted to Cortez Company Inc. by Right-of-Way NMNM 29081.

5. Any other reservation that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interest therein.

Detailed information concerning this action is available for review at the Office of the Bureau of Land Management, Rio Puerco Resource Area, 435 Montano NE, Albuquerque, New Mexico.

Upon publication of this notice in the **Federal Register,** the lands will be segregated from all forms of appropriation under the public laws, including the general mining laws, except for conveyance under the R&PP Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register,** (August 7, 1995), interested persons may submit comments regarding the proposed conveyance or classification of lands to the District Manager, Bureau of Land Management, 435 Montano NE, Albuquerque, New Mexico 87107.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a cemetery. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for cemetery.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register** (August 22, 1995).

Michael R. Ford,

District Manager.

[FR Doc. 95–15362 Filed 6–22–95; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for a Permit to Allow Incidental Take of the Threatened Northern Spotted Owl and Threatened Marbled Murrelet by the Oregon Department of Forestry on the Elliott State Forest, Coos and Douglas Counties, Oregon

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of document availability; request for comments.

SUMMARY: This notice advises the public that the Oregon Department of Forestry (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The application has been assigned permit number PRT–803344. The requested permit would authorize incidental take of the threatened northern spotted owl *(Strix occidentalis caurina)* (owl) and threatened marbled murrelet *(Brachyramphus marmoratus)* (murrelet) on the Elliott State Forest (Forest) in Coos and Douglas Counties, Oregon. The proposed incidental take would occur as a result of timber harvest activities in owl and murrelet habitat.

The Service also announces the availability of an Environmental Assessment (EA) for the proposed issuance of the incidental take permit. All comments received will become part of the public record and may be released. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application and EA should be received on or before July 24, 1995.

ADDRESSES: Comments regarding the application or EA should be addressed to Curt Smitch, Assistant Regional Director-North Pacific Coast Ecoregion, U.S. Fish and Wildlife Service, Pacific Northwest Habitat Conservation Plan Program, 3773 Martin Way East, Building C—Suite 101, Olympia, Washington 98506 (360–534–9330). Please refer to permit number PRT–803344 when submitting comments. Individuals wishing copies of the documents for review should immediately contact the office listed above.

FOR FURTHER INFORMATION CONTACT: Brian Bogaczyk, at the office listed above.

SUPPLEMENTARY INFORMATION:

Background

Under section 9 of the Act and its implementing regulations, ''taking'' of owls and murrelets, both threatened species, is prohibited. However, the Service, under limited circumstances, may issue permits to authorize take of threatened wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are in 50 CFR 17.32.

The Applicant proposes to implement a Habitat Conservation Plan (HCP) for owls and murrelets that will allow timber harvest on portions of the approximately 93,000 acre Forest in Coos and Douglas Counties, Oregon. The Applicant's proposed timber harvest may result in the take, as

defined in the Act and its implementing regulations, of owls and murrelets in the harvest area. The permit authorizing incidental take would be in effect for 60 years for owls, and 6 years for murrelets. The HCP includes mitigation that would be in effect for 60 years, and would benefit both owls and murrelets. The application includes an HCP and Implementation Agreement.

The Applicant proposes to mitigate the incidental take by: (1) Setting aside approximately 19 percent of the Forest in late successional reserves located along riparian areas, in important owl, murrelet, and other wildlife habitat, and other areas of high ecological or scenic value; (2) managing the remaining Forest acreage in longer (80–240-year) timber rotations; (3) reducing habitat fragmentation and edge; (4) maintaining a forest landscape conducive to dispersal by owls; (5) dedication of research funds for 5 years to investigate murrelet and owl habitat relationships; and (6) habitat enhancement at the stand level. The Applicant will minimize take through: (1) Implementing a decision hierarchy procedure designed to ensure timber harvest only occurs in the poorest quality potential murrelet habitat; (2) protect and buffer currently known murrelet-occupied sites; (3) for the first 5 years of HCP implementation, protect a 70-acre core area around currently known owl activity centers, and restrict timber harvest and road construction activities within 0.25 miles of currently known owl nest sites during the breeding season; and (4) prohibit timber harvest and road construction within 0.25 miles of known occupied murrelet stands during the breeding season.

The EA considers the environmental consequences of 5 alternatives, including the Proposed Action and No Action alternatives. The Proposed Action is the issuance of a permit under section 10(a) of the Act that would authorize incidental take of owls for 60 years and murrelets for 6 years on the Forest, in accordance with the HCP. The Conservation Biology alternative would set aside 81 percent of the Forest in reserves, and would have the lowest level of take, other than the No Action alternative. The Intermediate Rotation alternative would set aside 13 percent of the Forest, would not include many of the mitigation and minimization measures inherent in the proposed action, and would produce the highest level of take. The Modified Interim Plan alternative would set aside 67 percent of the Forest, and would produce an intermediate level of take. Under the No Action alternative, the Applicant would avoid incidental take of owls and murrelets and the permit would not be issued.

Dated: June 19, 1995.

John H. Doebel,

Deputy Regional Director, Region 1, Portland, Oregon.

(**Notice:** Availability of an Environmental Assessment and Receipt of an Application for a Permit Under Section 10(a)(1)(B) of the Endangered Species Act.)

[FR Doc. 95–15409 Filed 6–22–95; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Reclamation

Interim Concessions Management Policy Statement and Corresponding Concessions Management Guidelines

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation is extending the comment period published in 60 FR 21827, May 3, 1995, for the interim concessions management policy statement and corresponding concessions management guidelines. The extension will allow the public more time to prepare comments concerning the policy and guidelines.

DATES: Comments on the policy and guidelines must be postmarked no later than September 5, 1995.

FOR FURTHER INFORMATION CONTACT: To request a copy of the policy and guidelines contact Bruce Glenn, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado, 80225, Telephone: 303–236–3289, extension 314. Submit written comments to Mr. Glenn at the above address.

Dated: June 16, 1995.

Wayne Deason,

Assistant Director, Program Analysis Office.

[FR Doc. 95–15387 Filed 6–22–95; 8:45 am]

BILLING CODE 4310–94–P

National Biological Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information reproduced below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest for the reasons given below. Approval has been requested by July 1, 1995. Comments and suggestions on the proposal should be made directly to the bureau clearance officer listed below and the Office of Management and Budget, Paperwork Reduction Project (1089–NB52), Washington, DC 20503; telephone 202–395–7340.

Title: Request for Economic Valuation of Riverine Resources.

OMB approval number: 1089–NB52.

Abstract: This study focuses on entire river basin and ecosystem valuation methodology development. The overall goal is development of transferable models and methods for assessing the value of habitats, using the Tallaposa River in Alabama and Georgia as a study site. Methods to collect and analyze this data is needed to be able to predict the probable social and economic consequences of riverine and ecosystem management actions.

Results can assist decision-makers in effectively managing a river system's multiple uses. Telephone, mail and on-site interviews with Tallapoosa River users and non-users from a 20 county area will be the focus audience of this research.

Reason for expedited review: To allow timely continuation of project activities and to reduce difficulty in responding to question on use of the riverine resource during primary season use. Approval by expedited date would allow surveying to begin during or shortly after peak summer season.

Frequency: Once.

Description of respondents: Users and non-users of the Tallapossa River system.

Estimated completion time: 14.25 minutes per survey (weighted average of telephone and mail/on-site survey instruments).

Annual responses: 4,350.

Annual burden hours: 1,509.

Bureau clearance officer: Don Minnich 202–482–4838, MS 3070 MIB, 1849 C Street NW., Washington, DC 20240.

Dated: June 16, 1995.

H. Ronald Pulliam,

Director, National Biological Service.

[FR Doc. 95–15282 Filed 6–22–95; 8:45 am]

BILLING CODE 4310–DP–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–374]

Notice

In the Matter of certain electrical connectors and products containing same.

Notice is hereby given that the prehearing conference in this matter will commence at 9:00 a.m. on June 27, 1995, in Courtroom C (Room 217), U.S. International Trade Commission Building, 500 E St. SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register**.

Issued: June 20, 1995.

Paul J. Luckern,

Administrative Law Judge.

[FR Doc. 95–15426 Filed 6–22–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 731–TA–711 and 716–717 (Final)]

OCTG From Argentina, Mexico, and Spain

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of antidumping investigations Nos. 731–TA–711 and 716–717 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Argentina, Mexico, and Spain of oil country tubular goods (OCTG),[1] provided for in subheadings 7304.20, 7305.20, and 7306.20 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: June 20, 1995.

FOR FURTHER INFORMATION CONTACT: Douglas Corkran (202–205–3177), 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.

Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background.—The subject investigations are being instituted as a result of affirmative final determinations by the Department of Commerce that imports of OCTG from Argentina, Mexico, and Spain are being sold in the United States at less than fair value (LTFV) within the meaning of section 733 of the Act (19 U.S.C. § 1673b). Commerce's preliminary determinations of sales at LTFV were negative (60 F.R. 6503, February 2, 1995, and 60 F.R. 13119, March 10, 1995). These investigations were requested in petitions filed on June 30, 1994, by Bellville Tube Corp. (Bellville, TX); IPSCO Steel, Inc. (Camanche, IA); Koppel Steel Corp. (Beaver Falls, PA); Maverick Tube Corp. (Chesterfield, MO); North Star Steel Ohio (Youngstown, OH); U.S. Steel Group (Pittsburgh, PA); and USS/Kobe Steel Co. (Lorain, OH). The schedule for the subject investigations will be identical to that of the Commission's ongoing countervailing and antidumping duty investigations of the subject product (60 F.R. 10107, February 23, 1995).

Participation in the investigations and public service list.—Any person having already filed an entry of appearance in the ongoing countervailing and antidumping duty investigations on OCTG is considered a party in the subject antidumping investigations. Any other persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission not later than two (2) days after publication of this notice in the **Federal Register**. The time limits established in section 201.11(b) of the Commission's rules are hereby waived.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—The Secretary will make BPI gathered in these final investigations available to additional authorized applicants under the APO issued in the investigations, provided that the application is made not later than two (2) days after the publication of this notice in the **Federal Register**. The time limits established in section 207.7(a) of the Commission's rules are hereby waived. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in these investigations was placed in the nonpublic record on June 14, 1995, and a public version was issued on June 16, 1995, pursuant to section 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on June 27, 1995, at the U.S. International Trade Commission Building. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 22, 1995, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Requests for a separate hearing in these investigations for the limited purpose of supplementing the June 27, 1995, hearing record with testimony and evidence solely related to these antidumping duty investigations should be filed in writing with the Commission not later than June 30, 1995. If such a hearing is requested, parties will be contacted regarding the dates for the hearing and for the filing of briefs.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is June 21, 1995. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is July 6, 1995; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before July 6, 1995. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also 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

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[1] For the purposes of these investigations, OCTG are hollow steel products of circular cross-section. These products include oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether or not conforming to American Petroleum Institute (''API'') or non-API specifications, whether finished or unfinished (including green tubes). These investigations do not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium.

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 the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Issued: June 20, 1995

Donna R. Koehnke,

Secretary.

[FR Doc. 95–15547 Filed 6–22–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–710 (Final)]

Certain Seamless Carbon and Alloy Standard, Line, and Pressure Steel Pipe From Italy

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–710 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of certain seamless carbon and alloy standard, line, and pressure steel pipe [1] from Italy. Such imports are provided for in subheadings 7304.10.10, 7304.10.50, 7304.31.60, 7304.39.00, 7304.51.50, 7304.59.60, and 7304.59.80 of the Harmonized Tariff Schedule of the United States. The Commission will make its final injury determination within 75 days after receipt of Commerce's notification of its final determination (19 U.S.C. 1673d(b)).

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's rules of practice and procedure, part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: June 14, 1995.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–205–3184), 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. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

The subject antidumping investigation is being instituted as a result of the affirmative final determination by the Department of Commerce (60 FR 31981, June 19, 1995) that imports of certain seamless carbon and alloy standard, line, and pressure steel pipe from Italy are being sold in the United States at less than fair value (LTFV) within the meaning of section 733 of the Act (19 U.S.C. 1673b). Commerce's preliminary determination of sales at LTFV was negative (60 FR 5358, January 27, 1995). This investigation was requested in a petition filed on June 23, 1994, on behalf of the Gulf States Tube Division of Quanex Corp., Rosenberg, TX. The schedule for the subject investigation will be identical to that of the Commission's ongoing countervailing and antidumping duty investigations of the subject product (60 FR 11110, March 1, 1995).

Participation in the Investigation and Public Service List

Any person having already filed an entry of appearance in the related countervailing duty investigation is considered a party in this antidumping investigation. Any other persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations 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 § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) 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.

Staff Report.

A prehearing staff report applicable to this investigation was placed in the nonpublic record on June 7, 1995, and a public version was issued on June 8, 1995, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the ongoing countervailing and antidumping duty investigations (Invs. Nos. 701–TA–362 and 731–TA–707–709 (Final)) of the subject product, beginning at 9:30 a.m. on June 20, 1995, at the U.S. International Trade Commission Building. At that hearing, the Commission will hear testimony and receive evidence regarding the antidumping investigation instituted herein. Oral testimony and written materials to be submitted at the public hearing are governed by § 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Requests for a separate hearing in this investigation for the limited purpose of supplementing the June 20, 1995, hearing record with testimony and evidence solely related to the antidumping duty investigation, should be filed in writing with the Commission not later than June 27, 1995. If such a hearing is requested, parties will be contacted regarding dates for the hearing and for the filing of briefs.

Written Submissions

Parties may file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is June 28, 1995; witness testimony must be filed

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[1] The imports subject to investigation are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. The subject imports are further defined in the U.S. Department of Commerce's notice of final determination of sales at less than fair value (60 FR 31981, June 19, 1995).

no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before June 28, 1995. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3 and 207.7 of the Commission's rules.

In accordance with §§ 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: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: June 19, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–15425 Filed 6–22–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–33 (Sub-No. 89X)]

Union Pacific Railroad Company—Abandonment Exemption—In McPherson County, KS (McPherson Branch)

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 12.6-mile line of railroad between milepost 518.0 near McPherson and milepost 530.6 near Lindsborg, in McPherson County, KS.

UP has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) the line is not used to move overhead traffic; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 23, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by July 3, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 13, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, 1416 Dodge St., Room 830, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by June 28, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 14, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–15452 Filed 6–22–95; 8:45 am]

BILLING CODE 7035–01–P

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated March 13, 1995, and published in the **Federal Register** on March 17, 1995, (60 FR 14449), North Pacific Trading Company, 1505 SE Gideon Street, Portland, Oregon 97202, made application to the Drug Enforcement Administration to be registered as an importer of Marihuana (7360), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: June 15, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–15385 Filed 6–22–95; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By Notice dated April 7, 1995, and published in the **Federal Register** on April 20, 1995, (60 FR 19779), Stepan Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Benzoylecgonine (9180)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 15, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–15351 Filed 6–22–95; 8:45 am]

BILLING CODE 4410–09–M

Federal Bureau of Prisons

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of a Detention Center in Oahu Island, Hawaii

AGENCY: Federal Bureau of Prisons, Justice.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY

Proposed Action

The United States Department of Justice, Federal Bureau of Prisons has determined that a Detention Center is needed to provide Federal detention capacity in Oahu Island, Hawaii.

The four sites under consideration include the following:

Site A—An approximately four (4) acre tract located along Lagoon Drive and in close proximity to the Honolulu International Airport. The land is state controlled and is separated from Site B by Iolana Place. The land is currently being used as an airport employee parking lot.

Site B—An Approximately five (5) acre tract along Lagoon Drive and in close proximity to the Honolulu International Airport. The land is state controlled, and is separated from Site A by Iolana Place. The land is currently being used as an airport employee parking lot.

Site C—An approximately three (3) acre tract on the Makai side of Ualena Street, and bounded by Lagoon Drive and Ohohia Street (closer to Ohohia). The land is state controlled, and is also near the Honolulu International Airport. The land is vacant and currently being used for the temporary storage of new automobiles.

Site D—An approximately four (4) acre tract at Fort Armstrong behind the INS Building on Ala Moana. The land is state (2½ acres) and Federally (1½ acres) controlled, and is currently being used for government employee parking.

The Federal Bureau of Prisons proposes to construct a 500 bed detention facility for individuals who are awaiting trial, sentencing, or having other business before the United States District Court. As such, the facility is considered an extension of the Federal judiciary and law enforcement activity.

The sites under consideration are of sufficient size to provide space for detainee housing, programs, services and support areas, as well as administration, staff training and parking.

The Process

In the process of evaluating the four sites, several aspects will receive detailed examination including: utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources and socio-economic impacts.

Alternatives

In developing the DEIS, the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

Scoping Process

During the preparation of the DEIS, there will be numerous opportunities for public involvement. A public Scoping Meeting will be held at a time and location convenient to the citizens of Oahu. The meeting will be well-publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, a number of informal meetings will be conducted by representatives of the Bureau of Prisons with interested citizens, officials and community leaders.

DEIS Preparation

Public notice will be given concerning the availability of the DEIS for public review and comment.

Address

Questions concerning the proposed action and the DEIS can be answered by: David J. Dorworth, Acting Chief, Site Selection and Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, (202) 514–8697.

Dated: June 2, 1995.

David J. Dorworth,

Acting Chief, Site Selection and Environmental Review.

[FR Doc. 95–14935 Filed 6–22–95; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

June 20, 1995.

The Department of Labor has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act (44 U.S.C. Chapter 35) of 1980, as amended (Pub. L. 96–511). Copies may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ([202] 219–5095). Comments and questions about the ICRs listed below should be directed to Ms. O'Malley, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10325, Washington, DC 20503 ([202] 395–7316).

Individuals who use a telecommunications device for the deaf (TTY/TDD) may call [202] 219–4720 between 1 p.m. and 4 p.m. Eastern time, Monday through Friday.

Type of Review: Revision.

Agency: Employment and Training Administration.

Title: Adjudication Determinations Activity Report.

OMB Number: 1205–0150.

Agency Number: ETA 207.

Frequency: Quarterly.

Affected Public: State, Local or Tribal Government.

Type of reporting	Respondents	Estimated time per respondent minutes
Regular Reports	53	244
Extended Benefits	3	240

Total Burden Hours: 910.
Description: The data collected on the Employment and Training (ETA) 207 are used to monitor the impact of the disqualification provisions, to measure workload, and to appraise adequacy and effectiveness of State and Federal nonmonetary determination procedures.

Type of Review: Extension.
Agency: Employment and Training Administration.
Title: Attestation by Facilities Temporarily Employing Nonimmigrant Aliens as Registered Nurses.
OMB Number: 1205–0305.
Agency Number: ETA 9029.
Frequency: On occasion.
Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.
Number of Respondents: 1,403.
Estimated Time Per Respondent: 3 hours 19 minutes.
Total Burden Hours: 13,343.
Description: The information provided on this form by health care facilities will permit the Department of Labor to meet Federal responsibilities for program administration, management, and oversight.

Type of Review: New
Agency: Employment and Training Administration.
Title: Unemployment Insurance Survival Rate Analysis and Benefit Models.
OMB Number: 1205–0new.
Frequency: One-time.
Affected Public: Federal Government; State, Local or Tribal Government.
Number of Respondents: 15
Estimated Time Per Respondent: 40 hours.
Total Burden Hours: 600.
Description: This project is designed to conduct a comprehensive analysis of the nature of the Unemployment Insurance benefit payment process and to use those findings in developing an integrated benefit payment and workload projection model.

Type of Review: New.
Agency: Employment and Training Administration.
Title: Unemployment Insurance Performance Measurement Review System (PMR).
OMB Number: 1205–0new.
Frequency: Monthly; Quarterly.
Affected Public: State, Local or Tribal Government.

Type of reporting	Respondents	Average time per respondent hours
Monthly Universe	53	8
Quarterly Universe	53	1.5
SESA Workload for Sample Measures	53	4.5

Total Burden Hours: 38,486.
Description: The Unemployment Insurance Service and State Employment Security Agencies (SESAs) will utilize the UI PMRS to assess quality and timeliness of UI benefit operations. The results will help to determine operating areas that need corrective action plans to meet achievement standards in States' Annual Program and Budget Plan (PBP).

Type of Review: New.
Agency: Occupational Safety and Health Administration.
Title: Hazardous Waste Operations and Emergency Response (29 CFR 1910.120).
OMB Number: 1218–0new.
Frequency; One-time.
Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.
Number of Respondents: 650 clean-up site respondents, 3,940 disposal site respondents, 30,528 emergency response respondents, 35,118 total respondents.
Estimated Time Per Respondent: 1,545.49 for clean-up sites, 48.00 for disposal sites, 499.33 for emergency responders.
Total Burden Hours: 18,289,070.
Description: 29 CFR 1910.120 regulates the safety and health of employees engaged in hazardous waste site operations and emergency response to the release of hazardous substances from their containers. It was mandated by Congress under section 126 of the Superfund Amendments and Reauthorization Act of 1986. Worker populations covered by the rule include workers at Superfund clean-sites and similar operations, workers at the Environmental Protection Agency permitted disposal sites, and emergency response workers at those sites, fire fighters, emergency medical service personnel, policy, and others involved in hazardous substance emergency response.

Type of Review: New.
Agency: Occupational Safety and Health Administration.
Title: Personal Protective Equipment; Hazard Assessment Certification and Training Certification.
OMB Number: 1218–0new.
Frequency: One-time.
Affected Public: Business or other for-profit; Federal Government.
Number of Respondents: 103,000.
Estimated Time Per Respondent: 10 minutes.
Total Burden Hours: 17,510.
Description: Section 1910.132(d) requires employers to perform a hazard assessment of the workplace to determine if personal protective equipment (PPE) is necessary. Section 1910.132(f) requires employers to train employees in the use of PPE. Each employer will have to document that a hazard assessment and training has been performed.

Type of Review: New.
Agency: Occupational Safety and Health Administration.
Title: Welding, Cutting and Brazing.
OMB Number: 1218–0new.
Frequency: One-time.
Affected Public: Business or other for-profit; Federal Government.
Number of Respondents: 189,113.
Estimated Time Per Respondent: 2 hours.
Total Burden Hours: 378,226.
Description: Section 1910.252(a)(2)(xiii)(C) requires employers to develop and implement training for new welders, cutters and brazers in the safe use of welding, cutting and brazing equipment. There is no documentation requirement.

Type of Review: New.
Agency: Occupational Safety and Health Administration.
Title: Grain Handling Facilities.
OMB Number: 1218–0new.
Frequency: On occasion.
Affected Public: Business or other for-profit.
Number of Respondents: 810.
Estimated Time Per Respondent: 2 hours.
Total Burden Hours: 1,620.
Description: These recordkeeping requirements are directed toward assuring the safety of employees in grain handling through the development of a housekeeping plan which addresses the planned actions an employer expects to take relative to the control of combustible dust, and an emergency action plan which covers the designated actions

employers and employees must take during an emergency.

Type of Review: New.
Agency: Occupational Safety and Health Administration.
Title: Storage and Handling of Anhydrous Ammonia (29 CFR 1910.111).
OMB Number: 1218–0new.
Frequency: On occasion.
Affected Public: Business or other for-profit; Farms; State, Local or Tribal Government.
Number of Respondents: 5,000.
Estimated Time Per Respondent: 5 minutes.
Total Burden Hours: 2,500.
Description: The collection of information is necessary for the safe handling and storage of anhydrous ammonia, a substance which is extremely dangerous to humans (toxic and corrosive). This standard requires the marking and physical specifications of anhydrous ammonia containers.

Type of Review: Extension.
Agency: Occupational Safety and Health Administration.
Title: Occupational Exposure to 4,4'Methylenedianline (MDA) for the General Industry.
OMB Number: 1218–0184.
Frequency: On occasion.
Affected Public: Business or other for-profit.
Number of Respondents: 18.

Category	Average time per response
Emergency plan	0
Exposure monitoring	0
1. Initial	0
2. Periodic/additional	144
Employee notification:	
1. Initial	0
2. Periodic	72
3. Visual	2
Compliance program:	
1. Annual review and update	27
Respiratory program	0
Fit testing	189
Notify the laundry	0
Signs and labels	0
Information and training	18
Medical surveillance:	
1. Initial exams	0
2. Periodic exams	378
3. Additional exams	4
4. Multiple physician review	4
5. Information provided physician	20
6. Physicians' written opinion	20
7. Medical removal decision	0
Recordkeeping:	
1. Objective data for exempted	0
2. Exposure measurement	5
3. Federal records access	1
4. Federal records transfer	1
Total burden hours: 885.	

Description: The MDA Standard for General Industry and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to MDA. The Standard requires that employers must establish and maintain training, compliance, exposure monitoring and medical surveillance programs and records, and provide information to employees and others on these records. The records are used by employees, physicians, employers and the Occupational Safety and Health Administration (OSHA) to determine the effectiveness of the employers' compliance efforts. Also, the standard requires that OSHA have access to various records to ensure that employers are complying with the provisions of the MDA General Industry Standard.

Type of Review: EXTENSION.
Agency: Occupational Safety and Health Administration.
Title: Occupational Exposure to 4,4'Methylenedianline (MDA) for Construction.
OMB Number: 1218–0183.
Frequency: On occasion.
Affected Public: Business or other for-profit.
Number of Respondents: 66.

Category	Average time per response
Emergency plan	0
Exposure monitoring	0
1. Periodic/additional	528
Employee notification:	
1. Periodic	66
3. Visual	2
Compliance program:	
1. Annual review and update	99
Respiratory program	0
Fit testing	500
Notify the laundry	0
Signs and labels	0
Information and training	66
Medical surveillance:	
1. Initial exams	0
2. Periodic exams	800
3. Additional exams	8
Multiple surveillance exams:	
1. Multiple physician review	8
2. Information provided physician	41
3. Physicians' written opinion	41
4. Medical removal decision	0
Recordkeeping:	
1. Objective data for exempted	0
2. Exposure measurement	17
3. Federal records access	1
4. Federal records transfer	1

Total Burden Hours: 2,178.
Description: The MDA Standard for Construction and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to MDA. The Standard requires that employers must establish and maintain training, compliance, exposure monitoring and medical surveillance programs and records, and provide information to employees and others on these records. The records are used by employees, physicians, employers and the Occupational Safety and Health Administration (OSHA) to determine the effectiveness of the employers' compliance efforts. Also, the standard requires that OSHA have access to various records to ensure that employers are complying with the provisions of the MDA Construction Standard.

Theresa M. O'Malley,
Acting Departmental Clearance Officer.

[FR Doc. 95–15457 Filed 6–22–95; 8:45 am]
BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

DEPARTMENT OF EDUCATION

The Advisory Council for School-to-Work Opportunities; Notice of Establishment

In accordance with the Federal Advisory Committee Act, the Secretaries of Labor and Education have established The Advisory Council for School-to-Work Opportunities.

The Advisory Council for School-to-Work Opportunities shall provide advice to the Departments of Labor and Education on a number of matters pertaining to implementation of the School-to-Work Opportunities Act of 1994. The Council shall be responsible for: assessing the progress of School-to-Work Opportunities systems development and program implementation toward achieving the goals of the School-to-Work Opportunities Initiative; providing feedback and making recommendations to the Governing Board regarding the progress and direction of implementation of the School-to-Work Opportunities initiative; reporting periodically to the Governing Board on emerging issues, actions, and findings; and providing input into policy issues, as requested.

The Council will meet two times a year. It will be comprised of approximately 40 members, with the following representation: educators (seven), employers (six), labor (six), community groups (five), the general public (four), students (two, one secondary and one post-secondary), parents (two), State officials (four, e.g., current Governors, State legislators,

State STWO officials), and local officials (four, e.g., mayors, county administrators, local STWO officials). None of these members shall be deemed to be employees of the United States.

The Council will report to the Departments of Education and Labor through the School-to-Work Opportunities Governing Board, comprised of senior executive Federal officials from the Departments of Labor and Education. It will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act fifteen(15) days from the date of this publication.

Interested persons are invited to submit comments regarding the establishment of The Advisory Council for School-to-Work Opportunities. Such comments should be addressed to: J. D. Hoye, School-to-Work Office, 400 Virginia Ave., SW, Room 210, Washington, DC 20024.

Signed at Washington, DC this 15th day of June 1995.

Robert B. Reich,

Secretary of Labor.

Richard W. Riley,

Secretary of Education.

[FR Doc. 95–15458 Filed 6–22–95; 8:45 am]

BILLING CODE 4510–23–M

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 34, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S–3014, Washington, DC. 20210.

Notification to General Wage Determinations 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

Massachusetts
MA950007 (FEB. 10, 1995)
Maine
ME950031 (FEB. 10, 1995)
ME950032 (FEB. 10, 1995)
ME950034 (FEB. 10, 1995)
ME950035 (FEB. 10, 1995)
ME950036 (FEB. 10, 1995)
ME950037 (FEB. 10, 1995)
ME950038 (FEB. 10, 1995)
New York
NY950014 (FEB. 10, 1995)

Volume II:

Pennsylvania
PA950005 (FEB. 10, 1995)
PA950006 (FEB. 10, 1995)
PA950025 (FEB. 10, 1995)
PA950026 (FEB. 10, 1995)
PA950030 (FEB. 10, 1995)
PA950031 (FEB. 10, 1995)

Volume III:

Georgia
GA950050 (FEB. 10, 1995)

Volume IV:

Michigan
MI950001 (FEB. 10, 1995)
MI950002 (FEB. 10, 1995)
MI950003 (FEB. 10, 1995)
MI950004 (FEB. 10, 1995)
MI950005 (FEB. 10, 1995)
MI950007 (FEB. 10, 1995)
MI950012 (FEB. 10, 1995)
MI950017 (FEB. 10, 1995)
MI950034 (FEB. 10, 1995)
Wisconsin
WI950001 (FEB. 10, 1995)
WI950003 (FEB. 10, 1995)
WI950005 (FEB. 10, 1995)
WI950014 (FEB. 10, 1995)
WI950020 (FEB. 10, 1995)
WI950021 (FEB. 10, 1995)
WI950022 (FEB. 10, 1995)
WI950024 (FEB. 10, 1995)

Volume V:

Kansas
KS950009 (FEB. 10, 1995)
KS950013 (FEB. 10, 1995)
KS950015 (FEB. 10, 1995)

Volume VI:

Colorado
CO950005 (FEB. 10, 1995)
Idaho
ID950001 (FEB. 10, 1995)
Neveda
NV950001 (FEB. 10, 1995)
Oregon
OR950001 (FEB. 10, 1995)

OR950004 (FEB. 10, 1995)
Washington
WA950001 (FEB. 10, 1995)
WA950002 (FEB. 10, 1995)
WA950003 (FEB. 10, 1995)
WA950005 (FEB. 10, 1995)
WA950006 (FEB. 10, 1995)
WA950007 (FEB. 10, 1995)
WA950008 (FEB. 10, 1995)

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 subscription 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 interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which included all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 16th day of June 1995.

Alan L. Moss,

Director, Division of Wage Determination.

[FR Doc. 95–15170 Filed 6–22–95; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Technical Training Programs; Notice of Meeting

The ACRS Subcommittee on Technical Training Programs will hold a meeting on July 12, 1995, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Wednesday, July 12, 1995—8:30 a.m. until the conclusion of Business.

The Subcommittee will continue its review of NRC Technical Training Center curricula, with emphasis in the areas of probabilistic risk assessment and digital instrumentation and control systems. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff.

Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the scheduling of sessions which are open to the public, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Douglas Coe (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: June 16, 1995.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 95–15400 Filed 6–22–95; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on July 11, 1995, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance with the exception of a portion that may be closed to discuss General Electric Nuclear Energy (GENE) proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows: Tuesday, July 11, 1995—8:30 a.m. until the conclusion of business.

The Subcommittee will continue its review of the emergency procedure guidelines to cope with anticipated transients without scram (ATWS) compounded by BWR core power instabilities, and the associated NRC staff safety evaluation report (SER). A copy of the SER is available for inspection in the NRC Public Document Room, 2120 L Street, NW., Washington, DC. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, the BWR Owners Group, GENE, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the scheduling of sessions which are open

to the public, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: June 19, 1995.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 95–15398 Filed 6–22–95; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on July 12, 1995, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows: Wednesday, July 12, 1995—2:30 p.m. until the conclusion of business.

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (edt). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: June 16, 1995.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 95–15399 Filed 6–22–95; 8:45 am]

BILLING CODE 7590–01–M

Final NUREG: Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued NUREG/CR–6112, ''Impact of Reduced Dose Limits on NRC Licensed Activities—Major Issues in the Implementation of ICRP/NCRP Dose Limit Recommendations,'' as a final report. On May 21, 1991, the Nuclear Regulatory Commission (NRC) published a revision to 10 CFR Part 20, ''Standards for Protection Against Radiation.'' The rule became effective in June, 1991, and licensees were required to implement the regulations on or before January 1, 1994.

The revised 10 CFR Part 20 is based upon the recommendations of the International Commission on Radiological Protection (ICRP) in Publication 26 (ICRP 1977). In 1991, the ICRP published revised recommendations in Publication 60. These recommendations were based upon revised dosimetry and epidemiology, including the information presented in reports such as the 1988 United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR). The new recommendations include a revised occupational dose limitation approach of 100 mSv (10 rem) in 5 years, with the additional limitation that no more than 50 mSv (5 rem) be received in any one year.

In 1991, the National Council on Radiation Protection and Measurements (NCRP) recommended a lifetime limit of 10 mSv (1 rem) times age in years (NCRP Report 91). This recommendation was continued in recommendations published in 1993 (NCRP Report 116).

In anticipation of these recommendations, and as a result of the epidemiological and dosimetric information available in the last 5 years, the NRC staff initiated a study by Brookhaven National Laboratory (BNL) to analyze the potential impacts of reduced dose limits on its licensees. The results of this study are contained in this NUREG/CR. During the study period, a relatively small number of licensees responded to questionnaires and surveys, thereby limiting the extent to which the survey results can be assumed to be an accurate representation of the potential impacts of changed dose limits.

The NRC staff published these results in draft form in January 1994 to solicit further comments from interested parties regarding the impacts of the different possible dose limits discussed in the draft NUREG/CR.

NUREG/CR–6112 is not a substitute for NRC regulations, and compliance is not required. The approaches and/or methods described in this NUREG/CR are provided for information only. Publication of the report does not necessarily constitute NRC approval or agreement with the information cited therein.

Copies of NUREG/CR–6112 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

For further information contact George E. Powers, Radiation Protection and Health Effects Branch, Mail Stop NL/S–139, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415–6212.

Dated at Rockville, Maryland, this 5th day of May 1995.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 95–15403 Filed 6–22–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–01888 License No. 20–06900–01 EA 95–038]

In the Matter of: Elias Charles Dow, M.D. Boston, Massachusetts; Order Imposing a Civil Monetary Penalty

I

Elias Charles Dow, M.D. (Licensee) is the holder of Byproduct Materials License No. 20–06900–01 (License) issued by the Atomic Energy

Commission on November 7, 1960. The License was most recently renewed by the Nuclear Regulatory Commission (NRC or Commission) on April 24, 1990, and is currently under timely renewal. The License authorizes the Licensee to possess and use certain byproduct materials in accordance with the conditions specified therein at the Licensee's facility in Brookline, Massachusetts.

II

An inspection of the Licensee's activities was conducted on February 8, and March 1, 1995, at the Licensee's facility located in Brookline, Massachusetts. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated April 20, 1995. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for one of the violations.

The Licensee responded to the Notice in two letters, both dated April 28, 1995. In its responses, the Licensee denies the violation assessed a civil penalty (Violation I), and requests that the penalty be withdrawn.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, the Violation I occurred as stated in the Notice. The staff also has determined that an adequate basis was not provided for mitigation of the penalty and that a penalty of $750 should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, It is Hereby Ordered That:

The Licensee pay a civil penalty in the amount of $750 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738.

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a ''Request for an Enforcement Hearing'' and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in Section I of the Notice referenced in Section II above, and

(b) Whether on the basis of such violation, this Order should be sustained.

Dated at Rockville, Maryland this 16th day of June 1995.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix

Evaluations and Conclusion

On April 20, 1995, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during a NRC inspection conducted at the Licensee's facility located in Brookline, Massachusetts. The penalty was issued for one violation. The Licensee responded to the Notice in two letters, both dated April 28, 1995. In its responses, the Licensee denies the violation assessed a penalty (Violation I), and requests that the civil penalty be withdrawn. The NRC's evaluation and conclusion regarding the Licensee's requests are as follows:

Restatement of Violation I

10 CFR 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. 10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, unrestricted area means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, as of February 8, 1995, the licensee did not secure from unauthorized removal or limit access to licensed materials stored in an unrestricted area. Specifically, on numerous occasions, the licensee did not secure diagnostic capsules (each containing between 14 and 129 microcuries of iodine–131(I–131)) located in patients' homes, an unrestricted area, nor did the licensee control and maintain constant surveillance of this licensed material.

Summary of Licensee's Response to Violation I

In its responses, the Licensee denies the violation and requests that the civil penalty be withdrawn.

The Licensee states that the NMSS Licensee Newsletter 95–1 issued in March/April 1995, and the **Federal Register** dated January 25, 1995, both state that the medical administration of any radiation or radioactive material to any individual, including an individual who is not supposed to receive a medical administration, is regulated by the Commission's provisions governing the medical use of byproduct material (10 CFR Part 35) rather than the dose limits in NRC's regulation concerning standards for protection against radiation (10 CFR Part 20). The Licensee states that Part 35 takes precedence over Part 20 because the Licensee's use of I–131 in this instance is a medical use. The Licensee states that the regulation for unrestricted areas does not apply, and asserts that this is stated in 10 CFR 20.1002. The Licensee states that it appears that there should not have been a citation, since the I–131 was used for medical use.

The Licensee also states that the dispensing of I–131 capsules for diagnostic use has never resulted in any harm, and there is no way that capsules containing between 14 and 129 microcuries could have caused unnecessary exposure to members of the public anymore than if the patient had ingested the same capsule prior to leaving the premises. The Licensee further states that there have never been any reports in medical literature of instances of I–131 causing any harm to anyone at this dosage. The Licensee states that it is purely speculative and misleading to state that this could cause any unnecessary exposure to members of the public.

The Licensee further states that a patient who ingests 25 millicuries of I–131 for therapeutic purposes is permitted to go home, be with family, and mingle with the public without restriction. In addition, the licensee states that it seems paradoxical and illogical that the possession of a 100 microcurie capsule, either in the patient's possession or ingested internally, would constitute any public health hazard.

NRC Evaluation of Licensee's Response to Violation I

Notwithstanding the Licensee's contention, the NRC maintains that a violation of 10 CFR Part 20 occurred, and that 10 CFR 20.1801 and 20.1802 required that the I–131 be

secured or controlled until such time as it was administered to a patient. By giving the I–131 capsules to patients to take to their residence for self administration at a later time, the Licensee failed to secure or control the licensed material as required.

With respect to the Licensee's comment regarding the NMSS Licensee Newsletter 95–1 issued March/April 1995, and the Federal Register notice on January 25, 1995 (60 FR 4872), these documents describe a proposed NRC rulemaking concerning errors in administering radiation or radioactive materials for medical purposes. That rulemaking, if adopted in final form, would clarify that the dose limits for individual members of the public in 10 CFR 20.1301 do not apply to the exposure that the individual receives from such an error.[1] There is nothing in the proposed rulemaking that would exempt the medical use of licensed material from 10 CFR 20.1801 and 20.1802, which are the requirements that are cited in the violation. 10 CFR Part 35 does not take precedence over 10 CFR Part 20. 10 CFR 20.1002, ''Scope'', specifically states that the regulations in 10 CFR Part 20 apply to persons licensed pursuant to 10 CFR Parts 30 through 36, which includes 10 CFR Part 35, ''Medical Use of Byproduct Material.'' Similarly, 10 CFR 35.1, ''Purpose and scope'', states that the requirements and provisions of 10 CFR Part 20 apply to licensees subject to 10 CFR Part 35, unless specifically exempted.

Therefore, the NRC maintains that the violation occurred as stated in the Notice.

With respect to the Licensee's statement that dispensing of capsules containing between 14 and 129 microcuries of I–131 could not have caused any unnecessary exposure to members of the public anymore than if the patient had ingested the same capsule prior to leaving the premises, the NRC disagrees. Because of the Licensee's lack of security or control over the capsule (i.e., after the capsule had been given to the patient to take to the patient's home), the capsule could have been ingested inadvertently by someone other than the patient. Such an event would result in an unnecessary radiation exposure to an unintended person far in excess of the regulatory limits for radiation exposure to members of the public. Therefore, the violation was properly categorized at Severity Level III in accordance with the Enforcement Policy because of the potential safety hazard.

NRC Conclusion

The NRC has concluded that the violation assessed a penalty occurred as stated in the Notice. In addition, the NRC has concluded that the Licensee did not provide an adequate basis for withdrawal of the civil penalty. Accordingly, the proposed civil penalty in the amount of $750 should be imposed.

[FR Doc. 95–15402 Filed 6–22–95; 8:45 am]

BILLING CODE 7590–01–M

[1] Currently, 10 CFR 20.1002 provides that the limits of that Part do not apply to doses due to exposure of patients to radiation for the purpose of medical diagnosis or therapy.

[Docket No. 72–1]

General Electric Company; Notice of Issuance of Amendment to Materials License SNM–2500

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 9 to Materials License No. SNM–2500 held by the General Electric Company for the receipt and storage of spent fuel at the Morris Operation, located at 7555 East Collins Road, Morris, Illinois. The amendment is effective as of the date of issuance.

The amendment revises the General Electric Physical Security Plan making administrative changes which do not affect fuel receipt, handling, and storage safety.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.22(c)(12), an environmental assessment need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated December 28, 1994, as supplemented by letter dated March 10, 1995, and (2) Amendment No. 9 to Materials License No. SNM–2500 with the Commission's letter to the licensee. All of these items are available for public inspection at the Commission's Public Document Room, The Gelman Building, Lower Level, 2120 L Street, NW., Washington, DC., and the Local Public Document Room at the Morris Area Public Library District, 604 Liberty Street, Morris, Illinois, 60450.

Dated at Rockville, Maryland, this 16 day of June 1995.

For the Nuclear Regulatory Commission.

William D. Travers,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–15401 Filed 6–22–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the forty-fifth meeting of the Federal Salary Council will be held at the time and place shown below. At the meeting the Council will continue discussing issues relating to locality based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meeting is open to the public.

DATE: July 31, 1995, at 9 a.m.

ADDRESS: Office of Personnel Management, 1900 E Street NW., Room 7B09, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street NW., Room 6H31, Washington, DC 20415–0001. Telephone number: (202) 606–2838.

For the President's Pay Agent.

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–15247 Filed 6–22–95; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Committee of Advisors on Science and Technology

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a meeting of the President's Committee of Advisors on Science and Technology (PCAST), and describes the functions of the Committee. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES AND PLACE: July 11 and 12, 1995. The White House Conference Center, Truman Room, Third Floor, 726 Jackson Place NW., Washington, DC 20500.

TYPE OF MEETING: Open.

PROPOSED SCHEDULE AND AGENDA: The President's Committee of Advisors on Science and Technology (PCAST) will meet in open session on Tuesday, July 11, 1995, at approximately 9 a.m. to be briefed on the findings and recommendations of the PCAST Review

of the Department of Energy Magnetic Fusion Energy Program. The Committee will also discuss various aspects of Federal science and technology policies. This session will end at approximately 12 Noon. The Committee will reconvene in open session at approximately 1:30 p.m., to discuss issues related to the health of the Unites States research university system. This session will end at approximately 4 p.m. Either of the morning or afternoon sessions may be interrupted for the PCAST to gather at the White House to be introduced to the President of the United States.

The Committee will meet again in open session on Wednesday, July 12, at approximately 9 a.m. to discuss various components of the Committee's work plan. However, this session may be delayed until approximately 10:15 a.m. for the PCAST to gather at the White House to be introduced to the President of the United States.

FOR FURTHER INFORMATION: For information regarding time, place, and agenda please call Laurel Kayse or Mike Kowalok, (202) 456–6100, prior to 3 p.m. on Friday, July 7, 1995. Other questions may be directed to Angela Phillips Diaz, Executive Secretary of PCAST, or Mike Kowalok, (202) 456–6100. Please note that public seating for this meeting is limited, and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Committee of Advisors on Science and Technology was established by Executive Order 12882, as amended, on November 23, 1993. The purpose of PCAST is to advise the President on matters of national importance that have significant science and technology content, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Committee members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by John H. Gibbons, Assistant to the President for Science and Technology, and by John Young, former President and CEO of the Hewlett-Packard Company.

Dated: June 19, 1995.

Barbara Ann Ferguson,

Administrative Officer, Office of Science and Technology Policy.

[FR Doc. 95–15382 Filed 6–22–95; 8:45 am]

BILLING CODE 3170–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35863; File No. SR–Amex–95–23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc., Relating to the Discontinuation of the Emerging Company Marketplace

June 19, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 9, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to discontinue the listing of new companies on the Emerging Company Marketplace (''ECM'').

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 text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has determined to discontinue the listing of new companies on the ECM and is proposing to eliminate the ECM guidelines that allow for such listings. Companies that are presently listed on the ECM may continue listed there and will be subject to all the rules applicable to ECM issues, including the continued listing guidelines. Quotes and trades in such securities will continue to be reported to vendors with the ''.EC'' designator.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, 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 proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such

filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–95–23 and should be submitted by July 14, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15421 Filed 6–22–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35855; File No. SR–CBOE–95–30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, incorporated Relating to Membership Fees

June 16, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s (b)(1), notice is hereby given that on June 6, 1995, the Chicago Board Options Exchange, Incorporated (''CBOE'' or Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE hereby gives notice that it is proposing to amend the Exchange Regulatory Circular which sets forth the membership fees imposed by the Exchange (''Membership Fee Circular'').

The text of the Membership Fee Circular as proposed to be amended is available at the Office of the Secretary, CBOE 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 CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below,'' of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, Proposed Rule Change

The purpose of this proposed rule change is to amend the Membership Fee Circular in five respects.[1]

First, the Membership Fee Circular is proposed to be amended to reflect a new $500 fee to be paid to the Exchange by every Exchange member who makes application to the Exchange to transfer his or her membership into trust pursuant to recently adopted CBOE Rule 3.25 (''Transfer of Individual Membership in Trust''). The Exchange is establishing this fee pursuant to CBOE Rule 2.22 (''Other Fees or Charges'') in order to cover the administrative costs associated with processing applications under CBOE Rule 3.25. This fee will go into effect on June 1, 1995.

Second, the Membership Fee Circular is proposed to be amended to add to the Circular an existing Exchange fee which is payable quarterly by Exchange member firms for each inactive nominee status that such firms wish to maintain. This inactive nominee status maintenance fee is provided for by CBOE Rule 3.8 (''Nominees''), section (b)(1), and the amount of the fee is equal to the amount of the Exchange's quarterly membership dues. In addition, the Membership Fee Circular will reflect the policy of the Exchange that this fee is payable regardless of any waiver of membership dues which might be applicable.[2] This fee was originally filed with the Commission in 1990[3] but is not currently included in the Membership Fee Circular.

Third, the Membership Fee Circular is proposed to be amended to explicitly reflect the membership fees that are applicable to limited liability companies (''LLCs''). CBOE Rule 3.3 (''Qualifications of Member Organizations''), Interpretation and Policy .01 provides that for the purposes of eligibility for Exchange membership an entity organized as an LLC shall be deemed a corporation. Pursuant to this rule, LLCs that are applicants for Exchange membership are charged the same fee that is charged to corporations that are applicants for Exchange membership (*i.e.,* $250). Similarly, LLC managers and members are charged the same fee that is charged to executive officers and principal shareholders of corporations (*i.e.,* $250).

Fourth, the Membership Fee Circular is proposed to be amended to delete the reference to ''Stock Execution Business'' contained therein and to replace it with a reference to ''Order Service Firm.'' At the time that the Membership Fee Circular was last amended in 1992, CBOE Rule 6.77 (''Stock Execution Services'') provided that stock services could register with the Exchange for the purpose of providing market-makers on the Exchange's trading floor with order handling services related to stock transactions. In 1994, CBOE Rule 6.77 was amended to replace the term ''stock service'' with the term ''order service firm'' and to expand the scope of activities that can be engaged in by such firms on the Exchange's trading floor to include order handling services related to commodity transactions. Accordingly, the reference in the Membership Fee Circular to the membership fee that is applicable to such firms is amended to reflect this change in terminology.

Fifth, the Membership Fee Circular is proposed to be amended to provide that the $250 fee payable by persons who are shareholders or limited partners of firms applying to be members or who become shareholders or limited partners of member firms is payable by such persons whose ownership percentage of the organization is 5% or more. Similarly, the proposed rule change makes express that a similar fee requirement applies to members of an LLC whose ownership percentage is 5% or more. This is consistent with the Exchange's membership application materials which request information concerning shareholders, limited partners, and LLC members that have an ownership percentage that is 5% or greater and with Schedule A of SEC

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[1] The Membership Fee Circular was first filed with the Commission in 1990. *See* Securities Exchange Act Release No. 27898 (April 12, 1990), 55 FR 14887 (April 19, 1990) (notice of filing and immediate effectiveness of File No. SR–CBOE–90–05). All of the fees initially contained in the Membership Fee Circular had been previously filed with the Commission, and the purpose of the Membership Fee Circular was to enumerate these fees in a single document which could be distributed to the Exchange's membership. The Membership Fee Circular has been amended twice since 1990. *See* Securities Exchange Act Release No. 29747 (September 27, 1991), 56 FR 50600 (October 7, 1991) (notice of filing and immediate effectiveness of File No. SR–CBOE–91–31) and Securities Exchange Act Release No. 30901 (July 8, 1992), 57 FR 31546 (July 16, 1992) (notice of filing and immediate effectiveness of File No. SR–CBOE–92–12).

[2] According to the Exchange, this policy has been in effect since the fee was first filed with the Commission in 1990. The Exchange believes that because the fee is a separate, independent fee, authorized by Rule 3.8(b)(1), the waiver of membership dues would have no bearing on the fee. Telephone conversation between Michael L. Meyer, Attorney, Schiff Hardin & Waite, and James T. McHale, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, on June 15, 1995.

[3] *See* Securities Exchange Act Release No. 28092 (June 4, 1990), 55 FR 23621 (June 11, 1990) (order approving File No. SR–CBOE–90–09).

Form BD[4] which does the same with respect to broker-dealer applicants.

Finally, the proposed rule change makes certain editorial changes to clarify the Membership Fee Circular without affecting its substance.

The CBOE represents that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(4) of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other changes among CBOE members.

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 solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR–CBOE–95–30 and should be submitted by July 13, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15312 Filed 6–21–95; 8:45 am]

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[4] 17 CFR 249.501 (1992).

[5] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35852; File No. SR–CHX–95–06]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change To Add Interpretation and Policies .01, .02, and .03 Under Rule 3 of Article V of the Exchange's Rules and To Add a New Clerk's Fee

June 16, 1995.

On March 1, 1995 the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to add interpretation and policies .01, .02 and .03 under Rule 3 of Article V of the Exchange's Rules and to add a new clerk's fee.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35667 (May 3, 1995), 60 FR 24947 (May 10, 1995). No comments were received on the proposal.

First, the proposed rule change adopts interpretations under which *all* Floor employees will be required to submit a Uniform Application for Securities Industry Registration or Transfer (''Form U–4'') in order to become registered.[3] The Form U–4 requires detailed disclosure of background information, including information regarding employment and disciplinary history, and is the standard industry form submitted to Self Regulatory Organizations (''SROs'') for individuals required to be registered (including securities salespersons and traders). The Form U–4 also requires this information to be updated whenever the information submitted becomes inaccurate or incomplete.

Second, the Exchange also is imposing a requirement that a member (or member organization) promptly give written notice of termination of a Floor employee to the Exchange on the Uniform Termination Notice for Securities Industry Registration (Form U–5)[4] and concurrently provide a copy of such notice to the person who has been terminated.

Third, the proposal will require all Floor employees of members and member organizations and all Exchange members to be fingerprinted and to submit such fingerprints to the Exchange for identification, background checking, and appropriate processing.[5]

Finally, the proposal will impose an initial registration fee on clerks of $50.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b).[6] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public. Further, the Commission believes that the proposal is consistent with Section 6(c)(2) of the Act[7] in that it should assist the Exchange in fulfilling its regulatory responsibilities regarding the granting of membership by identifying those individuals who are subject to a statutory disqualification under Section 3(a)(39) of the Act.[8] In

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] Currently, only Floor employees that accept orders from the public and applicants for membership are required to submit a Form U–4 to the Exchange.

[4] Form U–5 contains information relating to the circumstances surrounding the termination of an applicant's prior employment, and must be completed and submitted to the NASD, and other SROs requiring such a submission under their respective rules, whenever a registered employee is terminated.

[5] Fingerprinting currently is required for each partner, director, officer or employee of broker-dealers pursuant to Rule 17f–2 under the Act, with certain exceptions. Floor clerks are not required by Rule 17f–2 to submit fingerprints because they do not physically handle monies or securities. *See* 17 CFR 240.17f–2 (1994).

[6] 15 U.S.C. 78f(b) (1988).

[7] *See* 15 U.S.C. 78f(c) (1988).

[8] The Exchange is required to make a determination in each case where an individual who is subject to a statutory disqualification (*e.g.*, is suspended or barred by an SRO, or has been

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addition, it should assist the Exchange in providing detailed information to the Commission under certain circumstances as required in Rule 19h–1.[9] Moreover, the Commission believes that the additional fingerprinting requirements being imposed by the Exchange will further enhance security measures implemented by the CHX and is consistent with Section 17(f)(2) of the Act.[10] Finally, the Commission finds that the clerk's fee is consistent with Section 6(b)(4) of the Act, which requires exchange rules to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.[11]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CHX–95–06) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15369 Filed 6–22–95; 8:45 am]

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convicted of any felony or certain enumerated misdemeanors) seeks admission to or continuance in membership, participation in, or association with a member or member organization. *See* 15 U.S.C. 78c(a)(39) (1988).

[9] Specifically, the Rule requires SROs to notify the Commission whenever it determines to admit or continue in membership or participation or association with a member or member organization, any person who is subject to a statutory disqualification. *See* 17 CFR 240.19h–1 (1994).

[10] *See* supra note 5.

[11] 15 U.S.C. 78f(b)(4) (1988).

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35853; File No. SR–NSCC–95–05]

Self-Regulatory Organizations; National Securities Clearance Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Modifying Procedures Relating to the Trade Comparison Service for Debt Securities

June 16, 1995.

On April 19, 1995, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–NSCC–95–05) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On April 27, 1995, NSCC filed an amendment to the proposed rule change requesting the Commission to consider the rule filing pursuant to Section 19(b)(2)[2] of the Act rather than under Section 19(b)(3)(A)[3] of the Act as originally filed.[4] Notice of the proposal was published in the **Federal Register** on May 25, 1995.[5] No comment letters were received. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Description of the Proposal

NSCC is modifying its procedures relating to the trade comparison service for debt securities. Specifically, NSCC is expanding the parameters for trade input and trade comparison for transactions in debt securities. The rule change will expand the comparison parameters for debt securities from $.05 per $1,000 of contract amount to a net $10 difference per trade for trades of $100,000 or less and to $.10 per $1,000 of contract amount for trades greater than $100,000. NSCC will continue to advise participants of money differences for fixed income transactions on the morning of T+1 when contract prices are reported to transaction parties.

NSCC expects to implement the proposed rule change during the late part of the second quarter of 1995. Participants will be notified of the exact date of this change by an NSCC Important Notice.

II. Discussion

Section 17A(b)(3)(F)[6] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that NSCC's proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) because expanding the comparison parameters for trades in debt securities should increase the initial trade date comparison rate for such transactions. Although NSCC has established comprehensive and effective procedures for the resolution of uncompared trades,[7] expanding the comparison parameters to increase the initial trade date comparison rate should result in a greater number of trades in debt securities being reported as compared earlier in the settlement cycle. Earlier comparison should provide greater certainty that those trades will settle on settlement date. Consequently, NSCC members should have to spend less time and resources on the supplemental activity required to resolve uncompared trades. Accordingly, the Commission believes that the proposed rule change should facilitate a faster and more effective comparison process and thereby should enhance the prompt and accurate clearance and settlement of securities transactions.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule because it will permit NSCC to notify its members and to begin use of the proposed rule change within NSCC's implementation schedule. In addition, as of the end of the period for public comment, the Commission had not received any comment letters on NSCC's proposal.

III. Conclusion

For the reasons stated above, the Commission finds that the proposal is consistent with the requirements of Section 17A of the Act[8] and the rules and regulations thereunder.

It is Therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–NSCC–95–05) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15370 Filed 6–22–95; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 15 U.S.C. 78s(b)(2) (1988).

[3] 15 U.S.C. 78s(b)(3)(A) (1988).

[4] Letter from John P. Barry, Associate Counsel, NSCC, to Peter Geraghty, Senior Counsel, Division of Market Regulations, Commission (April 24, 1995).

[5] Securities Exchange Act Release No. 35733 (May 18, 1995), 60 FR 27800.

[6] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[7] NSCC, Rules and Procedures, Procedure II.D.2. (June 7, 1995).

[8] 15 U.S.C. § 78q–1 (1988).

[9] 15 U.S.C. § 78s(b)(2) (1988).

[10] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35862; File No. SR–NASD–95–18]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Corporate Financing Underwriting Terms and Arrangements

June 19, 1995.

On May 3, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities

Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] The proposed rule change amends the NASD's Rules of Fair Practice, Article III, Subsection 44(c)(6)(B)(xi) of the Corporate Financing Rule to raise the permissible level of non-cash incentives to $100 per person per issuer annually.

Notice of the proposed rule change, together with the substance of the proposal, was issued by Commission release (Securities Exchange Act Release No. 35712, May 12, 1995) and by publication in the **Federal Register** (60 FR 26753, May 18, 1995). No comment letters were received. The Commission is approving the proposed rule change.

I. The Terms of Substance of the Proposed Rule Change

Subsection 44(c)(6)(B)(xi) of the Corporate Financing Rule (the ''Rule'') currently prohibits NASD members from receiving non-cash sales incentives from an issuer or its affiliates valued in excess of $50 per person per issuer annually. Such non-cash sales incentives are typically de minimis in nature, such as small souvenir or gift items, provided by issuers to a member or associated persons of a member. The sole purpose of this rule is to raise the permissible level of non-cash sales incentives to $100 per person, annually.

II. Commission Findings

The Commission believes that a dollar amount of $100 is still relatively low and will neither compromise the intent, nor reduce the ability, of the rule to prevent fraudulent acts and practices that might arise in connection with the giving of gifts or payments by issuers and their affiliates as non-cash compensation to members or persons associated with members.

Additionally, the amendment will make the value-limitation provisions of the Rule consistent with similar provisions in Article III, Sections 10 and 34 of the Rules of Fair Practice, with proposed amendments to Sections 26 and 29 now pending SEC approval, and with Rule 350(a) of the New York Stock Exchange (''NYSE''). The amendment to the Rule would provide regulatory consistency and simplify compliance for member firms that are also members of the NYSE.

The Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[3] which require that the rules of the association be designed to prevent fraudulent and manipulative acts and promote just and equitable principles of trade in that the proposed rule change allows for an increase in the dollar limit to a level that is still reasonably de minimis and provides for regulatory consistency with other rules of the NASD and the NYSE.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–95–18 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15420 Filed 6–22–95; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78*o*–3.

[Release No. 34–35854; File No. SR–NYSE–95–09]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 to Proposed Rule Change Relating to Entry of Limit-at-the-Close Orders

June 16, 1995.

I. Introduction

On March 3, 1995, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities and Exchange Commission of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to replace its current pilot[3] for the entry of limit-at-the-close (''LOC'') orders[4] to offset a published market-at-the-close (''MOC'') order[5] imbalance of 50,000 shares or more in stocks selected from expiration day[6] pilot stocks with a pilot including all stocks for which MOC order imbalances are published. On April 18, 1995, the NYSE submitted Amendment No. 1 to the proposed rule change.[7]

The proposed rule change, including Amendment No. 1, was published for comment in Securities Exchange Act Release No. 35653 (April 27, 1995), 60 FR 21839. No comments were received on the proposal.

II. Description of the Proposal

The proposed rule change proposes to expand the universe of stocks in which LOC orders may be entered to all stocks for which MOC imbalances are published pursuant to such procedures regarding time of order entry and order cancellation as the Exchange may establish from time to time.

Currently, the NYSE allows entry of LOC orders to offset published imbalances of MOC orders of 50,000 shares or more in five of the so-called ''pilot stocks.''[8] The Commission approved the current LOC order entry procedures on a 15-month pilot basis through July 15, 1995.[9] Thus far, LOC orders been entered rarely. Members cite the limited number of stocks for which LOC orders may be entered as a primary reason for not committing resources to effect system program changes necessary to support the pilot program.

The Exchange believes that by expanding the universe of eligible LOC stocks, it will make it more feasible for member firms to effect the systems changes required to use LOC orders.[10] The Exchange is therefore proposing to replace the current pilot to permit the entry of LOC orders to offset a MOC order imbalance of 50,000 shares or more in all stocks for which MOC order imbalances are published.[11] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 33706 (March3, 1994), 59 FR 11093.

[4] A LOC order is a limited price order entered for execution at the closing price if the closing price is within the limit specified. *See* NYSE Rule 13.

[5] A MOC order is a market order to be executed in its entirety at the closing price on the Exchange. *Id.*

[6] *See infra* note 11.

[7] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Glen Barrentine, Team Leader, SEC dated April 17, 1995.

[8] For purposes of LOC order entry, the term ''pilot stocks'' refers to the Expiration Friday pilot stocks plus any additional QIX Expiration Day pilot stocks. Specifically, the Expiration Friday pilot stocks consist of the 50 most highly capitalized Standard & Poors (''S&P'') 500 stocks and any component stocks of the Major Market Index (''MMI'') not included therein. The QIX Expiration Day pilot stocks consist of the 50 most highly capitalized S&P 500 stocks, any component stocks of the MMI not included therein and the 10 highest weighted S&P Midcap 400 stocks.

[9] *See* Release No. 33706, *supra,* note 3.

[10] The NYSE has represented that, before initiating the expanded pilot program, it will submit to the Commission a letter (1) stating that the NYSE is operationally ready to accept LOC orders and (2) informing the Commission of the start-up date for this pilot. Telephone conversation between Donald Siemer, Director of Market Surveillance, NYSE, to Elisa Metzger, Senior Counsel, SEC, on June 7, 1995.

[11] Currently, MOC imbalances are published for pilot stocks on expiration days and non-expiration days. The term ''expiration days'' refers to both (1) the trading day, usually the third Friday of the month, when some stock index options, stock index futures and options on stock index futures expire or settle concurrently (''Expiration Fridays'') and (2) the trading day on which end of calendar quarter index options expire (''QIX Expiration Days'').

In addition, on non-expiration days, MOC imbalances are published for stocks that are being added to or dropped from an index and, upon the request of a specialist, any other stock with the

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Exchange intends to keep the 3:55 p.m. cutoff time for the entry of LOC orders, except to correct a bonafide error. On expiration days, LOC orders will continue to be irrevocable after 3:40 p.m., except to correct a bonafide error. For non-expiration days, cancellation of LOC orders would be prohibited after 3:55 p.m., except to correct errors.[12]

The Exchange believes that LOC orders may be a useful means to help address the prospect of excess market volatility that may be associated with an imbalance of MOC orders at the close. Therefore, the Exchange believes it is appropriate to replace the current pilot for LOC orders to a pilot including all stocks for which MOC imbalances are published that will last for one year from the date of approval of this proposed rule change.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b).[13] The Commission believes the proposal is consistent with the Section 6(b))5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public.

As noted in approving the current pilot, the self-regulatory organizations have instituted certain safeguards to minimize excess market volatility that may arise from the liquidation of stock positions related to trading strategies involving index derivative products. For instance, since 1986, the NYSE has utilized auxiliary closing procedures on expiration days. These procedures allow NYSE specialists to obtain an indication of the buying and selling interest in MOC orders at expiration and, if there is a substantial imbalance on one side of the market, to provide the investing public with timely and reliable notice thereof and with an opportunity to make appropriate investment decisions in response.

The NYSE auxiliary closing procedures have worked relatively well and may have resulted in more orderly markets on expiration days. Nevertheless, both the Commission and the NYSE remain concerned about the potential for excess market volatility, particularly at the close on expiration days. Although, to date, the NYSE has been able to attract sufficient contra-side interest to effectuate an orderly closing, adverse market conditions could converge on an expiration day to create a market dislocation which could make member firms and their customers unwilling to acquire significant positions.

The NYSE recently adopted auxiliary closing procedures for MOC orders on non-expiration days that are substantially similar to those in place for expiration days.[14] This allows members and member organizations to follow comparable procedures at the close on all trading days. Although there is less likelihood of an influx of MOC orders at the close on non-expiration days, certain trading and asset allocation strategies use NYSE closing prices and, accordingly, could employ MOC orders. In the event of unusual market conditions, the Commission believes that the MOC procedures for non-expiration days offer benefits in terms of assessing volatility at the close of trading in the same manner as the NYSE's procedures for expiration days.

The Commission continues to believe preliminarily that LOC orders should provided the NYSE with an additional means of attracting contra-side interest to help alleviate MOC order imbalances both on expiration and non-expiration days. As a practical matter, the Commission believes that LOC orders will appeal to certain market participants who other wise might be reluctant to commit capital at the close. Specifically, unlike a MOC order, which results in significant exposure to adverse price movements, a LOC order will allow each investor to determine the maximum/minimum price at which he or she is willing to buy/sell. To the extent that such risk management benefits encourage NYSE member firms and their customers to enter orders to offset MOC order imbalances of 50,000 shares or more, thereby adding liquidity to the market, the Commission agrees with the NYSE that LOC orders could become a useful investment vehicle for curbing excess price volatility at the close.[15]

The Commission also finds that the NYSE has established appropriate procedures for the handling of LOC orders and that the NYSE's existing surveillance should be adequate to monitor compliance with those procedures. Because LOC orders will be required to yield priority to conventional limit orders at the same price, the Commission is satisfied that public customer orders on the specialist's book will not be disadvantaged by this proposal. In addition, the Commission believes that the proposed 3:55 p.m. deadline for LOC order entry strikes a reasonable balance between the need to effectuate an orderly closing and the need to avoid unduly infringing upon legitimate trading strategies. Similarly, in the Commission's opinion, the prohibition on cancelling LOC orders is consistent with the Exchange's auxiliary closing procedures and, like those procedures, should allow specialists to make a timely and reliable assessment of order flow and its potential impact on the closing price.

The Commission is approving LOC order entry for all stocks for which MOC order imbalances are published on a pilot basis contingent on the extension or permanent approval of the MOC procedures.[16] During the pilot program, the Commission expects the NYSE to monitor the effectiveness of its LOC order procedures.

The Commission therefore requests that the NYSE submit a report to the Commission, by May 31, 1996, describing its experience with the expanded pilot program. At a minimum, this report should contain the following data for each expiration day during the 10-month period after the start-up date for LOC order entry for all stocks: (1) For all stocks which had a MOC order imbalance of 50,000 shares or more at 3:40 p.m., the names of those stocks and the size of the imbalance; (2) for each stock listed in (1) above, the size of the MOC order imbalance at 4:00 p.m. and an appropriate measure of the size of conventional limit order and LOC order interest, on the opposite side of the market from the imbalance, at 4:00 p.m.; (3) for each stock listed in (1) above, (i) the price of the transaction effected closest in time to 3:40 p.m., the price of the last regular way trade and the closing price, (ii) the change in price of the closing transaction, measured as a percentage, from the last regular way

approval of a Floor Official. *See* Securities Exchange Act Release No. 35589 (April 10, 1995), 60 FR 19313.

[12] The NYSE modified its electronic display book, such that LOC orders are prioritized relative to other LOC orders by time of entry, but are required to yield priority to all conventional limit orders on the specialist's book at the same price. Telephone conversation between Donald Siemer, Director of Market Surveillance, NYSE, to Elisa Metzger, Senior Counsel, SEC, on June 16, 1995.

[13] 15 U.S.C. 78f(b).

[14] *See supra* note 11.

[15] Furthermore, the Commission notes that LOC orders could allow the NYSE to accomplish this goal without diminishing any benefit to investors from trading strategies that rely on MOC orders to guarantee a fill at the closing price.

[16] The pilot program for MOC procedures expires on October 31, 1995. *See* Securities Exchange Act Release No. 34916 (October 31, 1994), 59 FR 55507.

trade and from the transaction effected closest in time to 3:40 p.m., (iii) historical data analyzing price volatility for the same stock on expiration days prior to the implementation of this pilot program; and (4) the average price volatility for all stocks listed in (1) above. The NYSE report also should contain, for one week per calendar quarter (including at least one week with no expiration days) the data described herein, as modified to reflect the MOC procedures for non-expiration days. Any requests to modify this pilot program, to extend its effectiveness or to seek permanent approval for the pilot procedures also should be submitted to the Commission, by May 31, 1996, as a proposed rule change pursuant to Section 19(b) of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NYSE–95–09) is approved on a pilot basis to expire on July 31, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18].

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15422 Filed 6–22–95; 8:45 am]

BILLING CODE 8010–01–M

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Elan International Finance, Ltd., Liquid Yield Option Notes Dues 2012) File No. 1–11378

June 19, 1995.

Elan International Finance, Ltd. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, it has listed the Security with the New York Stock Exchange, Inc. (''NYSE''). In making the decision to withdraw the LYONS from listing on the Amex, the Company considered the direct and indirect costs and expenses in connection with maintaining the dual listing of the Security on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of the Security and believes that dual listing would fragment the market for its LYONS. The Amex has informed the Company that it has no objections to the withdrawal of the Security from listing on the Amex.

Any interested person may, on or before July 11, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–15417 Filed 6–22–95; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Elan Corporation plc, American Depositary Shares Evidenced by American Depositary Receipts, Representing Ordinary Shares, Par Value 4 Irish Pence; Warrants To Purchase Ordinary Shares, par Value 4 Irish Pence, Represented by American Depositary Shares, Evidenced by American Depositary Receipts of Elan Corporation, plc) File No. 1–10416

June 19, 1995.

Elan Corporation, plc (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities (''Securities'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, the Securities are listed on the New York Stock Exchange, Inc. (''NYSE'').

In making the decision to withdraw the Securities from listing on the Amex, the Company considered the direct and indirect costs and expenses in connection with maintaining the dual listing of the Securities on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of the Securities and believes that dual listing would fragment the market for the Securities.

Any interested person may, on or before July 11, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–15418 Filed 6–22–95; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Great Pines Water Company, Inc., Common Stock, $0.01 Par Value) File No. 1–12130

June 19, 1995.

Great Pines Water Company, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the Boston Stock Exchange, Inc. (''BSE'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the expense associated with the BSE listing can not be justified. The Security is currently a Nasdaq Stock Market SmallCap security.

Any interested person may, on or before July 11, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application

has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–15419 Filed 6–22–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26310]

Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act'')

June 16, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 10, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Maine Yankee Atomic Power Company (No. 70–7627)

Maine Yankee Atomic Power Company (''Maine Yankee''), 329 Bath Road, Brunswick, Maine 04011, an indirect subsidiary of Northeast Utilities and New England Electric System, both registered holding companies, has filed a post-effective amendment to its declaration under Sections 6(a) and 7 of the Act and Rule 54 thereunder.

By order dated July 18, 1989 (HCAR No. 24925), Maine Yankee was authorized to enter into a Secured Credit Agreement (''Agreement'') with a syndicate of commercial banks and to issue promissory notes (''Notes'') under the Agreement, through August 31, 1992, from time-to-time in an outstanding aggregate principal amount of up to $50 million. The Notes could have maturities of from one day to ten years from the date of issuance. By subsequent order dated August 20, 1992 (HCAR No. 25608), Maine Yankee was authorized to amend the Agreement (''Amended Agreement'') in several respects, including the interest rate options, and to extend the time in which it could issue Notes in the same outstanding aggregate principal amount, through August 31, 1995.

Maine Yankee now proposes to extend the time in which it may issue Notes under the Amended Agreement in the same outstanding aggregate principal amount and under the same terms and conditions, through August 31, 1998.

Consolidated Natural Gas Company, et al. (70–8619)

Consolidated Natural Gas Company (''CNG''), a registered holding company, CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3199, and its wholly owned nonutility subsidiary companies, CNG Research Company and Consolidated Natural Gas Service Company, Inc., both located at CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3199; CNG Coal Company; CNG Producing Company (''Producing'') and its subsidiary company, CNG Pipeline Company, all located at CNG Tower, 1450 Poydras Street, New Orleans, Louisiana 70112–6000; CNG Transmission Corporation and CNG Storage Service Company, both located at 445 West Main Street, Clarksburg, West Virginia 26301; CNG Energy Services Corporation (''Energy Services''), One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244–0746; and CNG's public-utility subsidiary companies, The Peoples Natural Gas Company, CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3199; The East Ohio Gas Company, located at 1717 East Ninth Street, Cleveland, Ohio 44114–0759; Virginia Natural Gas, Inc., 5100 East Virginia Beach Boulevard, Norfolk, Virginia 23502–3488; Hope Gas, Inc., P.O. Box 2868, Clarksburg, West Virginia 26301–2868; and West Ohio Gas Company (''West Ohio''), P.O. Box 1217, Lima, Ohio 45802–1217 (Collectively, ''Subsidiaries''), have filed an application-declaration under sections 6(a), 6(a)(2), 7, 9(a), 10, 12(b) and 12(c) of the Act and rules 43 and 45. A notice was issued by the Commission with respect to this application-declaration on June 2, 1995 (HCAR No. 26300) (''Notice'').

As set forth in the notice and, more completely, in the application-declaration, CNG has proposed to issue and sell commercial paper and/or short term notes from time to time through June 30, 1996 in amounts not to exceed $1.25 billion and to finance the Subsidiaries with up to $1.225 billion through June 30, 1996. Additionally, CNG Producing proposes through June 30, 1996 to purchase up to 10,000 shares of its common stock from CNG. Also, CNG Energy Services proposes to issue and sell shares of its common stock to CNG at amounts greater than par up to a maximum of $10,000 per share.

Consolidated Natural Gas Company, et al. (70–8621)

Consolidated Natural Gas Company (''Consolidated''), CNG Tower, Pittsburgh, Pennsylvania 15222–3199, a registered holding company, and its wholly owned nonutility subsidiary company, CNG Energy Service Corporation (''Energy Services''), One Park Ridge Center, Pittsburgh, Pennsylvania 15244–0746, have filed an application-declaration under sections 9(a), 10 and 12(b) of the Act and rule 45 thereunder.

By order dated February 27, 1987 (HCAR No. 24329) (''Order''), the Commission authorized Energy Services, among other things, to be the gas marketing subsidiary company for the Consolidated System. Specifically, the Order authorizes Energy Services, as a gas marketer, to purchase, pool, transport, exchange, store and sell gas supplies from competitively priced sources, including the spot markets, independent producers and brokers, and the Consolidated System producing affiliate, CNG Producing Company (''Gas Related Activities'').

Energy Services is financed by Consolidated pursuant to the authorizations granted in annual Consolidated intra-system financing proceedings. Energy Services is currently authorized, for the period July 1, 1994 through June 30, 1995, to receive up to $100 million from Consolidated under the system financing order dated June 27, 1994 (HCAR No. 26072) (''Financing

Authority''). A request to increase the amount of such Financing Authority to $300 million for the fiscal period July 1, 1995 through June 30, 1996 is currently under review by the Commission.

Energy Services now proposes, without further Commission approval, to invest an aggregate amount not to exceed the lesser of $150 million or its unused Financing Authority to acquire: (1) an ownership interest, which may be up to 50% of the voting or nonvoting stock, in one or more corporations established for the sole purpose of engaging in Gas Related Activities; (2) either into its own name or through a wholly owned special purpose subsidiary company, up to 50% of the general partnership interests in one or more partnerships, or up to 50% voting equity interest in one or more other joint business entities such as joint ventures or limited liability companies, which are established for the sole purpose of engaging in Gas Related Activities; and/or (3) up to 100% of the limited partnership interests in one or more partnerships established for the sole purpose of engaging in Gas Related Activities. None of the projects in which Energy Services would seek to invest will be a utility company.

Energy Services is currently reviewing a number of possible investments in projects with nonaffiliates which would enhance its ability to obtain supplies of natural gas for its customers. None of the projects currently under study would by itself require equity investment by Energy Services or its subsidiary company in excess of $25 million, with most of the opportunities being in the $3 to $5 million investment range. The amount that could be invested by Energy Services in joint entities would be included in the Financing Authority available to Energy Services from Consolidated. However, the amount invested (including capitalized development expenses) by Energy Services in such joint entities will in no event exceed the lesser of $150 million or the unused amount authorized for Consolidated financing of Energy Services during the authorization period ending December 31, 1997.

Consolidated and Energy Services propose to guarantee their obligations incurred as a result of equity investments made in the joint entities up to an aggregate amount not to exceed the lesser of $150 million or its unused Financing Authority. Such guarantees, if made by Consolidated, would be calculated as part of the maximum $750 million authority to guarantee obligations of Energy Services granted in Commission order dated November 16, 1993 (HCAR No. 25926).

Atlantic Energy, Inc. (70–8647)

Atlantic Energy, Inc. (''Atlantic''), 6801 Black Horse Pike, Pleasantville, New Jersey 08232, an exempt public utility holding company, has filed an application under Sections 9(a)(2) and 10 of the Act.

By order dated October 15, 1987 (HCAR. 24475) (''Order''), Atlantic, a New Jersey corporation, became a public utility holding company exempt from all provisions of the Act except section 9(a)(2) pursuant to section 3(a)(1). Atlantic's principal electric utility subsidiary company, Atlantic City Electric Company (''ACE''), provides electric service in southern New Jersey. The Order authorized Atlantic to acquire the common stock of ACE and those of ACE's electric utility subsidiary company, Deepwater Operating Company, pursuant to Sections 9(a)(2) and 10 of the Act.

The Order was issued subject to the condition that neither Atlantic nor any non-utility subsidiary of Atlantic would, without prior authorization of the Commission, acquire from any person other than a subsidiary company or an affiliate of the acquiring company, or an affiliate of any associate company, any securities, utility assets or interests in other business other than:

1. Such securities, utility assets, or interest in any business, as could property be acquired under the Act were the acquiring company a registered holding company or an associate for a registered holding company, without further authorization, permission, or approval by the Commission;

2. Securities, or assets, or an interest in a business, representing (a) an investment in qualifying cogeneration facilities, as defined, pursuant to PURPA in any geographic area or (b) an investment in a small power production project located in the service territory of Atlantic Electric or any other member of the Pennsylvania-New Jersey Maryland Interconnection or within other areas hereafter allowed by law or applicable regulation;

3. Securities, or assets, or an interest in any business, representing an investment in a business which is, or upon completion of the construction thereof will be, functionally related to Atlantic Electric's utility business;

4. Securities, or assets, or an interest in any business representing a passive investment in property acquired on terms substantially equivalent to those authorized by the Commission in *Central and South West Corp.*, HCAR No. 23578, 32 SEC Docket 412 (January 22, 1985);

5. The purchase by an investment subsidiary of Atlantic Energy of accounts receivable of associate companies in Atlantic Energy's system and others on terms substantially equivalent to those authorized by the Commission in *Central and South West Corp.*, HCAR No. 23767, 33 SEC Docket 971 (July 19, 1985) and HCAR No. 24157, 36 SEC Docket 245 (July 31, 1986); or

6. Securities, or assets, or any interest in any business (a) which is substantially equivalent to any type of investment of any registered holding company or any exempt holding company, or any subsidiary company of any such company, that shall have been authorized, permitted, or approved by order of the Commission issued subsequent to January 1, 1987, or by any rule or regulation of the Commission, or (b) which conforms to any guidelines or restrictions of a general or generic nature applicable to registered holding companies or exempt holding companies or subsidiaries thereof, that have been adopted or approved by order of the Commission issued subsequent to January 1, 1987, or by any rule or regulation of the Commission.

Atlantic requests that the condition be removed from the Order because the circumstances which gave rise to the inclusion of the condition in the Order no longer exist and such removal would not be detrimental to the public interest. Atlantic notes that ACE's rates and certain other matters are subject to regulation by the New Jersey Board of Public Utilities (''BPU'') and Atlantic believes that the regulatory structure in existence in New Jersey is sufficient to protect ratepayers' interests.

In addition, the New Jersey Division of the Ratepayer Advocate, which is the successor to Rate Counsel, has indicated that it does not object to the removal of the condition, subject to Atlantic agreeing to remain in compliance, unless the Ratepayer Advocate shall agree to any deviation, with the following limitation on non-utility investments:

So long as Atlantic Energy shall be an exempt holding company under the 1935 Act, except as may otherwise be authorized, permitted or approved by order of the Commission, or of any successor commission, under the 1935 Act, neither Atlantic Energy nor Atlantic City Electric shall make any investment, including loans, in any non-utility subsidiary, affiliate or associate company that would cause the total investment by Atlantic Energy and Atlantic City Electric in all such non-utility subsidiaries, affiliates and associate companies to exceed, at the time any such investment is made, 10% of Atlantic Energy's consolidated assets. For purposes of the foregoing, a company primarily engaged in the business of investing in and/or the ownership or operation of, qualifying facilities, as defined by, PURPA [the Public Utility Regulatory Policies Act of 1978], shall be deemed not to be a ''non-utility'' subsidiary, affiliate or associate company.

This limitation is contained in an agreement between Atlantic and Rate Counsel established at the time of the formation of Atlantic as a holding company.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15368 Filed 6–22–95; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Westbridge Capital Corp., Common Stock, $0.10 Par Value) File No. 1–8538

June 19, 1995.

Westbridge Capital Corp. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, the Security is listed on the New York Stock Exchange, Inc. (''NYSE''). The Security commenced trading on the NYSE at the opening of business on April 12, 1995 and concurrently therewith the Security was suspended from trading on the Amex.

In making the decision to withdraw the Security from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant with maintaining the dual listing of the security on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of the Security and believes that dual listing would fragment the market for the Security.

Any interested person may, on or before July 11, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–15423 Filed 6–22–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2223]

Collection of Fee for Processing Garnishment of Department of State Employees for Payment of Debt

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State is giving notice that, as authorized by title 5 United States Code, section 5520a(j)(2), it will collect and use a fee for processing of garnishments against Department of State employees to satisfy debts other than for alimony or child support. The fee is $30, and it will be collected from the employee at the time the garnishment is first instituted. It will be added to the amount garnished as a charge against salary.

EFFECTIVE DATE: Pay period beginning July 2, 1995.

ADDRESSES: Comments regarding this notice should be sent to the Assistant Legal Adviser for Legislation and General Management (L/LM), Office of the Legal Adviser, Department of State, room 5425, 22nd and C Streets NW., Washington, D.C. 20520.

FOR FURTHER INFORMATION CONTACT: Ms. Sheila McCoy phone number (202) 647–7359.

SUPPLEMENTARY INFORMATION: The law permitting garnishment to satisfy debts also authorizes government agencies to collect a fee for such garnishments. Based upon a cost study, the Department of State has decided to impose a fee of $30.00 for receipt and processing of each garnishment. As required by the law, this fee will be charged to the employee whose salary is being garnished.

The fee will be charged for each garnishment order served and processed. Thus, each time a court or other institution orders the Department to garnish an employee's salary, the Department will deduct the $30.00 fee. Although administrative costs are incurred for each pay period for which a garnishment is in effect, no additional fee will be charged to cover those costs.

The fee will deducted at the time the garnishment is first instituted. It will be added to the garnishment amount, except that, in cases where the garnishment amount plus the fee would exceed the statutory garnishment limit, the garnishment amount will be reduced to keep the total within that limit.

The fee does not apply to garnishments for child support or alimony under title 42 of the United States Code, sections 659, 661, and 662.

Mary Beth West,

Assistant Legal Adviser for Legislation and General Management.

[FR Doc. 95–15380 Filed 6–22–95; 8:45 am]

BILLING CODE 4710–08–M

[Public Notice 2226]

Advisory Committee on Historical Diplomatic Documentation; Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet July 6 and 7, 1995, in the Department of State, in Conference Room 1107.

The Committee will meet in open session from 9:00 a.m. on the morning of Thursday, July 6, 1995, until 12 noon. The remainder of the Committee's sessions, 1 p.m. on Thursday, July 6 until 1 p.m. Friday, July 7, will be closed in accordance with section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). It has been determined that discussions during these portions of the meeting will involve consideration of matters not subject to public disclosure under 5 U.S.C. 552b(c)(1), and that the public interest requires that such activities will be withheld from disclosure.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123.

Dated: June 19, 1995.

William Z. Slany,

Executive Secretary.

[FR Doc. 95–15381 Filed 6–22–95; 8:45 am]

BILLING CODE 4710–11–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were

transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 USC Chapter 35).

DATES: June 16, 1994.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Annette Wilson, Information Resource Management (IRM) Strategies Division, M–32, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–4735.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection requests were submitted to OMB on June 16, 1995:

DOT No: 4067
OMB No: 2127—New
Administration: National Highway Traffic Safety Administration (NHTSA)
Title: NHTSA Customer Satisfaction Surveys
Need for Information: Executive Order No. 12862 requires agencies to set customer service standards.
Proposed Use of Information: This information will be used by NHTSA to: (1) Identify their customers, and (2) Survey their customers on services and results desired and on satisfaction with existing services
Frequency: Varies with each survey
Burden Estimate: Varies with each survey
Respondents: Varies with each survey
Form(s): None
Average Burden Hours Per Response: Varies with each survey.

Issued in Washington, DC, on June 16, 1995.

Paula R. Ewen,

Chief, Information Resource Management (IRM), Strategies Division.

[FR Doc. 95–15359 Filed 6–22–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 16, 1995.

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: 50393
Date filed : June 12, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 10, 1995
Description: Application of Air Alliance, Inc., pursuant to 49 U.S.C. Section 41304 of the Act, and Subpart Q of the Regulations, applies for amendment if its Foreign Air Carrier Permit to authorize it to provide scheduled and charter foreign air transportation of persons, property, and mail from any point or points in Canada to any point or points in the United States.

Docket Number: 50394
Date filed: June 12, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 10, 1995
Description: Application of Air Ontario, Inc., pursuant to 49 U.S.C. Section 41304 of the Act and Subpart Q of the Regulations, applies for amendment of its Foreign Air Carrier Permit to authorize it to provide scheduled and charter foreign air transportation of persons, property, and mail from any point or points in Canada to any point or points in the United States.

Docket Number: 50397
Date filed: June 13, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 28, 1995
Description: Application of Loken Aviation, Inc., requests the Department to reissue its certificate of public convenience and necessity in the name of Lynden Air Cargo, Inc., and accept the fitness data included in Appendix A in support of its existing operation. In addition, applicant requests that it be found fit to operate large aircraft in all-cargo service as outlined in Appendix C. Under its code sharing agreement with Zantop, applicant has no operational control or financial responsibility for the operation of large aircraft service, and there has been no significant change in its operations as a result.

Docket Number: 50399
Date filed: June 16, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 14, 1995
Description: Application of Malev Hungarian Airlines, pursuant to Section 402(c) of the Act and Subpart Q of the Regulations, requests renewal of its Foreign Air Carrier Permit for:

(a) Authority to engage in foreign air transportation of persons, property and mail between Budapest and the co-terminal points New York, Chicago and Los Angeles (code-sharing only) via intermediate points in Europe and Canada.

(i) MALEV proposes to continue to serve New York (John F. Kennedy International Airport).

(ii) The current service involved herein will continue to be scheduled service involving persons, property and mail, utilizing Hungarian registered Boeing 767–200 aircraft. The continuing frequency of service will be daily scheduled round-trip flights between Budapest and New York.

(iii) At a later date Malev may also serve the co-terminal points Chicago and/or Los Angeles, whether through joint commercial use (blocked space) or code sharing agreements, with one or more carriers or, eventually through direct operation of owned or leased aircraft.

(b) In addition to the scheduled services proposed to continue to be operated under the authorizations sought herein, Malev also requests continuing authority to engage in charter services:

(i) With respect to passenger and/or cargo flights between any point or

points in Hungary and any point or points in Hungary and any point or points in the United States; and

(ii) With respect to passenger flights: between any point or points in the United States, and any point or points in any third country or countries provided that such traffic is carried via a point or points in Hungary and makes a stopover in Hungary for at least two consecutive nights.

Docket Number: 50405

Date filed: June 16, 1995

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 14, 1995

Description: Application of Continental Airlines, Inc., pursuant to 49 U.S.C. 41108, and Subpart Q of the Act, applies for a certificate of public convenience and necessity authorizing it to provide scheduled foreign air transportation of persons, property and mail between Houston, Texas and Newark, New Jersey, on the one hand, and Lima, Peru, on the other hand, nonstop or via Bogota, Colombia. Continental also requests the right to combine service at the points on this route with service at other points Continental is authorized to serve by certificates or exemptions, consistent with applicable international agreements.

Paulette V. Twine, Chief,

Documentary Services Division.

[FR Doc. 95–15463 Filed 6–22–95; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

Research and Development Programs Meeting Agenda

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice provides the agenda for a public meeting at which NHTSA will describe and discuss specific research and development projects.

DATES AND TIMES: As previously announced, the National Highway Traffic Safety Administration will hold a public meeting devoted primarily to presentations of specific research and development projects on June 27, 1995, beginning at 1:30 p.m. and ending at approximately 5:00 p.m.

ADDRESSES: The meeting will be held at the Ramada Inn, near Detroit Metro, 8270 Wickham Rd., Romulus, MI 48174.

SUPPLEMENTARY INFORMATION: This notice provides the agenda for the tenth of a series of quarterly public meetings to provide detailed information about its research and development programs. This meeting will be held on June 27, 1995. The meeting was announced on May 25, 1995 (60 FR 27808). For additional information about the meeting consult that announcement.

Starting at 1:30 p.m. and concluding by 5:00 p.m., NHTSA's Office of Research and Development will discuss the following topics:

* Upgrade side impact protection,
* Vehicle aggressivity and fleet compatibility,
* Crash test dummy component development,
* Upgrade seat and occupant restraint systems,
* Thorax injury research program,
* Performance guidelines for ITS systems,
* Crash causal analysis.

NHTSA has based its decisions about the agenda, in part, on the suggestions it received by June 8, 1995, in response to the announcement published on May 25, 1995.

As announced on May 25, 1995, in the time remaining at the conclusion of the presentations, NHTSA will provide answers to questions on its research and development programs, where those questions have been submitted in writing by June 19, 1995, to the Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Rita I. Gibbons, Administrative Staff Assistant, Office of Research and Development, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202–366–4862. Fax number: 202–366–5930.

Issued: June 19, 1995.

William A. Boehly,

Associate Administrator for Research and Development.

[FR Doc. 95–15391 Filed 6–22–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

June 13, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Financial Management Service (FMS)

OMB Number: 1510–0030

Form Number: POD 1690

Type of Review: Extension

Title: Certification of Bill From Undertaker

Description: This form is used when application is made by the funeral home for the funeral expenses of a deceased postal depositor. This form is completed by a relative of the deceased depositor certifying that the bill submitted by the funeral home is correct. Entitlement to the funds are based on this data to insure proper payment.

Respondents: Individuals or households

Estimated Number of Respondents: 10

Estimated Burden Hours Per Response: 15 minutes

Frequency of Response: On occasion

Estimated Total Reporting Burden: 3 hours

Clearance Officer: Jacqueline R. Perry, (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland

Departmental Reports Management Officer.

[FR Doc. 95–15444 Filed 6–22–95; 8:45 am]

BILLING CODE 4810–35–P

Public Information Collection Requirements Submitted to OMB for Review

June 16, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0046
Form and Recordkeeping Numbers: ATF F 27–G and ATF REC 5520/2
Type of Review: Extension
Title: Applications—Volatile Fruit-Flavor Concentrate Plants
Description: Persons who wish to establish premises to manufacture volatile fruit-flavor concentrates are required to file an application so requesting. ATF uses the application information to identify persons responsible for such manufacture, since these products contain ethyl alcohol and have potential for use as alcoholic beverages with consequent loss of revenue. The application constitutes registry of a still, a statutory requirement
Respondents: Business or other for-profit
Estimated Number of Respondents/Recordkeepers: 10
Estimated Burden Hours Per Respondent/Recordkeeper: 3 hours
Frequency of Response: On occasion
Estimated Total Reporting/Recordkeeping Burden: 30 hours
OMB Number: 1512–0098
Form and Recordkeeping Numbers: ATF F 5520.2 and ATF REC 5520/1
Type of Review: Extension
Title: Annual Report of Concentrate Manufacturers, and Usual and Customary Business Records-Volatile Fruit Flavor Concentrate (VFFC) Plants
Description: VFFC manufacturers are regulated because the products they produce contain ethyl alcohol which can be diverted to untaxpaid beverage use. Records required are usual and customary business records of receipt and transfer. The required annual report provides a basis for statistics concerning this industry. Records and the report are audited to protect the revenue
Respondents: Business or other for-profit
Estimated Number of Respondents/Recordkeepers: 87
Estimated Burden Hours Per Respondent/Recordkeeper: 20 minutes
Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 29 hours
OMB Number: 1512–0515
Form Number: ATF F 5000.28T
Type of Review: Extension
Title: 1993 Cigarette Floor Stocks Tax Return, Recordkeeping and Reporting Requirements
Description: The Omnibus Budget Reconciliation Act of 1990 raised the excise tax of tobacco products effective 1/1/93. The Act also imposes a floor stocks tax affecting wholesale and retail dealers in cigarettes as well as producing/warehouse facilities. ATF F 5000.28T and the regulations (already published) implement the law and are necessary to protect the revenue
Respondents: Business or other for-profit
Estimated Number of Respondents: 60,000
Estimated Burden Hours Per Respondent: 12 hours, 30 minutes
Frequency of Response: Other (One time only, January 1993)
Estimated Total Reporting Burden: 750,000 hours
Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–15445 Filed 6–22–95; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

June 16, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service (CUS)

OMB Number: 1515–0001.
Form Number: CF 7509.
Type of Review: Extension.
Title: Air Cargo Manifest.
Description: Customs Form 7509 is the source of information that provides for the accountability, integrity, and security of goods in air commerce that are imported into the United States.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 150.
Estimated Burden Hours Per Respondent: 40 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 116,586 hours.
OMB Number: 1515–0077.
Form Number: CF 7514.
Type of Review: Extension.
Title: Drawback Notice (Lading/Foreign Trade Zone Transfer).
Description: Customs Form 7514 is used by drawback liquidators to determine that a drawback claimant has received supplies (normally oil) for use in operating the vessels or aircraft and is, therefore, entitled to drawback of these supplies or that articles were properly transferred to a foreign trade zone rather than being exported.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 833 hours.
Clearance Officer: Norman Waits, (202) 927–1551, U.S. Customs Service, Printing and Records Management Branch, Room 6426, 1301 Constitution Avenue NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–15446 Filed 6–22–95; 8:45 am]

BILLING CODE 4820–02–P

Public Information Collection Requirements Submitted to OMB for Review

June 12, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1262.
Form Number: IRS Form 8038–Q.
Type of Review: Reinstatement.

Title: Issuer's Information Return for Qualified Mortgage Bonds (QMBs).

Description: Form 8038–Q is used by issuers of qualified mortgage bonds to report information to the Internal Revenue Service applicable to each federally-subsidized mortgage loan financed through the issuance of a bond and to furnish certain required information to the mortgagors (borrowers). These issuers include state and local governments.

Respondents: State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 74,500.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—5 hr., 30 min.

Learning about the law or the form—2 hr., 23 min.

Preparing, Copying, assembling, and sending the form to the IRS and to the borrower or holder—2 hr., 35 min.

Frequency of Response: Other (a filing for each federally-subsidized mortgage granted).

Estimated Total Reporting/Recordkeeping Burden: 1,673,600 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–15447 Filed 6–22–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

June 16, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1059.

Form Number: IRS Forms 7018 and 7018–A.

Type of Review: Revision.

Title: Employer's Order Blank for Forms.

Description: Forms 7018 and 7018–A allow taxpayers who must file information returns a systematic way to order information tax forms materials.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,668,000.

Estimated Burden Hours Per Respondent: 3 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 83,400 hours.

OMB Number: 1545–1083.

Regulation ID Number: INTL–0961–86 Temporary Regulations (T.D. 8261); INTL–0399–88 Final Regulations (T.D. 8434).

Type of Review: Extension.

Title: Treatment of Dual Consolidated Losses.

Description: Section 1503(d) denies use of the losses of one domestic corporation by another affiliated domestic corporation where the loss corporation is also subject to the income tax of another country. The regulation allows an affiliate to make use of the loss if the loss has not been used in the foreign country and if an agreement is attached to the income tax return of the dual resident corporation or group, to take the loss into income upon future use of the loss in the foreign country. The regulation also requires separate accounting for a dual consolidated loss where the dual resident corporation files a consolidated return.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 400.

Estimated Burden Hours Per Respondent: 45 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 328 hours.

OMB Number: 1545–1336.

Form Number: IRS Forms 9455 and 9456.

Type of Review: Extension.

Title: IRS Taxpayer Education Programs Annual Survey.

Description: The data collected will be used to estimate the number of individuals who teach IRS' Educational Programs, and the number of students who are exposed to the Understanding Taxes (UT) High School, UT–8th Grade, UT-Post Secondary, and the Small Business Tax Education Programs during the course of a year. It will also be used to justify the continued use of these programs. This effort is in line with IRS initiatives on reducing taxpayer burden and Compliance 2000 initiatives to encourage voluntary compliance with the tax laws.

Respondents: State, Local or Tribal Government.

Estimated Number of Respondents: 120,800.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 20,137 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–15448 Filed 6–22–95; 8:45 am]

BILLING CODE 4830–01–P

Study of the United States Financial Services System

AGENCY: Department of the Treasury.

ACTION: Request for comments.

SUMMARY: The Secretary of the Treasury (Secretary) is conducting a study of the strengths and weaknesses of the United States financial services system in meeting the needs of the system's users. We encourage all interested parties to submit written comments on the topics set forth below.

DATES: Comments must be received by August 22, 1995.

ADDRESSES: Interested parties are requested to submit *written* data, views, or arguments. A public file containing all the public comments will be maintained at the Department of the Treasury.

Comments should be sent via mail or facsimile to:

Study of the United States Financial Services System, Department of the Treasury, Room 3025, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Fax number 202/622–0256.

FOR FURTHER INFORMATION CONTACT: For further information contact Joan Affleck-Smith, Director, Office of Financial Institutions Policy, 202/622–2740.

SUPPLEMENTARY INFORMATION: On September 29, 1994, the President signed into law the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. Section 210 of the Act requires the Secretary to conduct a study that assesses the

strengths and weaknesses of the United States financial services system in meeting the needs of its users, including the needs of: (1) Individual consumers and households; (2) communities; (3) agriculture; (4) small-, medium-, and large-sized businesses; (5) governmental and non-profit entities; and (6) exporters and other users of international financial services. The Act requires the Secretary to report to Congress by December 29, 1995, on the results of the study, including any recommendations.

The Act also requires the Secretary, in conducting the study, to consult with an Advisory Commission on Financial Services, to be appointed by the Secretary, and with the following governmental agencies: The Board of Governors of the Federal Reserve System; the Commodity Futures Trading Commission; the Office of the Comptroller of the Currency; the Office of Thrift Supervision; the Federal Deposit Insurance Corporation; the Department of Housing and Urban Development; the Securities and Exchange Commission; the Congressional Budget Office; and the General Accounting Office.

The Act requires the Secretary to consider:

- The effects that changes in the national economy, international economy, and the financial services industry will have on the ability of the financial services system to meet the needs of the national economy and the system's users; and
- The adequacy of the existing legal and regulatory framework of the financial services system to meet the needs of the system's users.

Based on the results of the study, the Secretary may make recommendations, as appropriate, for changes in statutes, regulations, and policies to improve the operation of the financial services system, including changes to better: (1) Meet the needs of, and assure access to the system for, current and potential users; (2) promote economic growth; (3) protect consumers; (4) promote competition and efficiency; (5) avoid risk to the taxpayers; (6) control systemic risk; and (7) eliminate discrimination.

Background

The United States financial services system has changed rapidly and significantly in recent years. The more important changes have included:

(1) The growing importance of non-traditional, unregulated financial intermediaries in providing a broad array of lending, saving, payment, and investment services in competition with traditional, regulated depository institutions;

(2) The globalization of financial markets as financial services providers compete in the U.S. and abroad to meet the needs of their internationally engaged customers; and

(3) Innovations in information and telecommunications technologies that permit creation of new financial products and new ways to package and distribute existing products.

Because of these changes, it is appropriate that consideration be given to the needs of users of financial services as the financial services industry evolves.

Questions for Respondents

Respondents (both users and providers of financial services) should build their responses around the two core questions posed in the legislation requiring this study. These questions are:

1. What effect will changes in the national and international economies have on the ability of the U.S. financial services system to meet your needs as a user of financial services?

2. Is the existing legal and regulatory framework of the U.S. financial services system adequate to meet your needs as a user of financial services? What changes in that framework would better enable providers of financial services to meet your needs?

Respondents should assess the strengths and weaknesses of the U.S. financial services system as completely as possible from their perspective as users or providers. These responses will help identify specific user needs (for example, access by small businesses to credit and capital) and the changes appropriate to help meet those needs.

Dated: June 12, 1995.

Richard S. Carnell,

Assistant Secretary (Financial Institutions), Department of the Treasury.

[FR Doc. 95–15343 Filed 6–22–95; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 121

Friday, June 23, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. § 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) second meeting in a series, described below, regarding DOE's standards-based safety management program.

TIME AND DATE: 9:00 a.m., July 18, 1995.

PLACE: The Defense Nuclear Facilities Safety Board, public Hearing Room, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Board will reconvene and continue the open meeting conducted on May 31, 1995, regarding DOE's standards-based safety management program. 42 U.S.C. § 2286b requires that the Board review and evaluate the content and implementation of standards relating to the design, construction, operation, and decommissioning of defense nuclear facilities of the Department of Energy. Those standards include rules, DOE safety Orders, and other requirements. The Board, acting pursuant to its enabling statute, has issued a series of Recommendations (most notably 90–2 and 94–5) designed to foster the development of an effective standards-based nuclear safety program within DOE. The Secretary of Energy has accepted each of these Recommendations. In the meantime, DOE is engaged in a number of initiatives designed to simplify existing safety Orders and the promulgation of new rules. The Secretary of Energy's commitment to implementing Board recommendations calling for an effective standards-based safety program will require careful integration with these recent DOE initiatives. The Board will hold a public meeting to consider the essential elements of a safety management program that is standards-based and to review DOE's progress in developing such a program.

CONTACT PERSON FOR MORE INFORMATION: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll free number.

SUPPLEMENTAL INFORMATION: The Board has a responsibility for oversight of DOE's development of nuclear health and safety requirements as the transition is being made from the use of safety Orders to rules. The Board understands the reasons for development and promulgation of nuclear safety requirements through rulemaking and is concerned that the conversion process not compromise the requirements-based safety program now embodied in the DOE's safety Orders. The Board's most recent effort to ensure that the ''good engineering practices'' codified in DOE's safety Orders are maintained was expressed in its Recommendation 94–5, dated December 29, 1994. In that Recommendation, the Board noted the results of its review of selected DOE contracts and DOE advisories and stated, among other things, that:

> The provisions [of these DOE contracts and advisories by DOE management] indicate that the integrated use of nuclear safety-related Rules, Orders, standards and guides in defining and executing DOE's safety management program may not be sufficiently well understood by either the M&O contractors or DOE managers. This issue was raised in the Board's letter of May 6, 1994 to the Department of Energy.
>
> Given the situation as described above, the Board believes that further DOE actions are needed to ensure there is no relaxation of commitments made to achieve compliance with requirements in Orders while proposed rules are undergoing the development process. These actions should also provide for smooth transition of Orders to rules once promulgated.

Recommendation 94–5, in its entirety, is on file in DOE's Public Reading Rooms, at the Defense Nuclear Facilities Safety Board's Washington office, and on the Internet through access to the Board's electronic bulletin board at the following address: gopher://gopher.dnfsb.gov:7070. It is also set forth in the **Federal Register** at 60 FR 2089.

In accord with the statute establishing the Board, a public meeting will be conducted to lay the groundwork for a full assessment of how Standards/Requirements Identification Documents (S/RIDs), rules, Orders, and other safety requirements are integrated into an overall safety management program for defense nuclear facilities. To assist the Board and inform the public, individual Board members will present their views, and the Board's staff will brief the Board on related topics, including, but not limited to the following:

1. Status of staff reviews of DOE revisions to safety Orders and rules.
2. Approaches to development and implementation of standards-based safety programs for DOE nuclear weapons research and development activities.

A transcript of this proceeding will be made available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office.

The Board also intends to notice and further conduct public hearings pursuant to 42 U.S.C. § 2286b, at a later date, to assess the Department of Energy's (DOE) progress in implementing an effective standards-based safety program of DOE's defense nuclear facilities and to assure that DOE's activities in streamlining DOE's nuclear safety order system and converting to a regulatory program do not eliminate the engineering practices now codified in DOE's safety Orders that are necessary to adequately protect public health and safety.

The Board reserve its right to further schedule and otherwise regulate the course of these meetings and hearings, to recess, reconvene, postpone or adjourn the meeting, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: June 21, 1995.

John T. Conway,

Chairman.

[FR Doc. 95–15615 Filed 6–21–95; 3:53 pm]

BILLING CODE 3670–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of June 26, 1995.

An open meeting will be held on Tuesday, June 27, 1995, at 10:00 a.m. A closed meeting will be held on Tuesday, June 27, 1995, following the 10:00 a.m. open meeting.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Tuesday, June 27, 1995, at 10:00 a.m., will be:

1. Consideration of a release expressing the views of the Commission concerning problematic practices under Regulation S of the Securities Act of 1933. In connection with these practices, consideration of proposals (a) designed to streamline requirements with respect to financial statements of significant acquisitions by eliminating certain impediments to registered offerings of securities under the Securities Act of 1933 and by providing an automatic 75-day waiver for reports under the Securities Exchange Act of 1934 for certain unavailable acquiree financial statements and (b) requiring registrants to report on a quarterly basis recent sales of equity securities that have not been registered under the Securities Act of 1933. For further information, contact: Paul Dudek or Annemarie Tierney, Office of International Corporate Finance, Division of Corporation Finance, at (202) 942–2990, or Douglas Tanner, Office of Chief Accountant, Division of Corporation Finance, at (202) 942–2960.

2. Consideration of a recommendation to propose revisions to rules under the Securities Exchange Act of 1934 to double the total assets threshold for Section 12(g) registration from $5 million to $10 million. For further information, contact: Richard K. Wulff, Office of Small Business Policy, Division of Corporation Finance, at (202) 942–2950.

3. Consideration of a recommendation to propose regulations that would implement a system whereby registrants could choose to include abbreviated financial statements in annual reports and other disclosure documents that are delivered to investors. For further information, contact: Elizabeth M. Murphy or William B. Haseltine, Office of Disclosure Policy, Division of Corporation Finance, at (202) 942–2910.

4. Consideration of a recommendation to propose streamlining the proxy statement by permitting certain executive compensation information to be provided in the annual report on Form 10–K; consideration of a recommendation to improve the presentation of director compensation disclosure. For further information, contact: Elizabeth M. Murphy or William B. Haseltine, Office of Disclosure Policy, Division of Corporation Finance, at (202) 942–2910.

5. Consideration of a recommendation to propose a new Section 3(b) exemption from the registration requirements of the Securities Act of 1933 for issues of up to $5 million where the securities are offered and sold in reliance on a recently adopted California qualification exemption, and to solicit comment on whether the prohibition against general solicitation in certain Regulation D offerings should be reconsidered in light of the new California exemption's approach to this issue. For further information, contact: Richard K. Wulff, Office of Small Business Policy, Division of Corporation Finance, at (202) 942–2950, or James R. Budge, Office of Disclosure Policy, Division of Corporation Finance, at (202) 942–2910.

6. Consideration of whether to propose amendments to the Securities Act rules that would allow issuers to solicit interest in their companies prior to the filing of a Securities Act registration statement for an initial public offering. For further information, contact: Richard K. Wulff, Office of Small Business Policy, Division of Corporation Finance, at (202) 942–2950, or James R. Budge, Office of Disclosure Policy, Division of Corporation Finance, at (202) 942–2910.

7. Consideration of a recommendation to propose amendments to the holding period requirements contained in Rule 144(d) and (k) under the Securities Act of 1933 to permit limited resales of ''restricted'' securities after a one-year, rather than a two-year holding period, and free resales by non-affiliated shareholders after a two-year, rather than a three-year holding period. Further, comment would be requested on whether Rule 144 should be revised to address new trading strategies, such as equity swaps, and a reminder would be issued to persons subject to the reporting requirements of Section 16 under the Securities Exchange Act of 1934 that these transactions are required to be reported. For further information, contact: Richard K. Wulff, Office of Small Business Policy, Division of Corporation Finance, at (202) 942–2950.

The subject matter of the closed meeting scheduled for Tuesday, June 27, 1995, following the 10:00 open meeting, will be:

Institution of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Settlement of injunctive actions.

Settlement of administrative proceedings of an enforcement nature.

Formal orders of investigation.

Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: June 21, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15613 Filed 6–21–95; 3:54 pm]

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federal register

Friday
June 23, 1995

Part II

Securities and Exchange Commission

17 CFR Part 200, et al.
Rules of Practice; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 201, 202, 203, 209, 228, 229, 230, 232, 240, 250, 260, 270 and 275

[Release No. 34–35833; File No. S7–40–92]

RIN 3235–AF91

Rules of Practice

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission today announces the adoption of comprehensive revisions to its Rules of Practice (''Rules''), the procedural rules that govern Commission administrative proceedings. Enforcement proceedings initiated by the Commission and review of disciplinary proceedings brought by self-regulatory organizations are among the most frequently occurring and significant proceedings governed by the Rules. Adoption of the Rules and the other actions taken today implement recommendations made by the Commission's Task Force on Administrative Proceedings in its final Report, entitled *Fair and Efficient Administrative Proceedings.*

The Rules contain procedures implementing authority granted to the Commission by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 to issue administrative temporary cease-and-desist and disgorgement orders. The Rules also implement revised procedures for the conduct of hearings, including simplified service of orders instituting proceeding, expanded use of prehearing conferences, codification of policies on the availability of certain investigation files to respondents in enforcement and disciplinary proceedings, issuance of subpoenas returnable prior to hearing and the consideration by administrative law judges of dispositive motions prior to hearing. In addition, the Rules contain revised procedures governing appeals to the Commission including various procedural requirements governing Commission review of self-regulatory determinations that were previously contained in part in Rules 19d–2 and 19d–3 under the Securities Exchange Act of 1934.

The revised Rules better facilitate full, fair and efficient proceedings by setting forth applicable procedural requirements more completely and in an easier to use format; by streamlining procedures that had become burdened with archaic requirements; and by the addition of provisions that address changes in statutory requirements, judicial and administrative case law developments, Commission policies, and litigation practices since the Rules were last revised.

The Commission also announces the issuance of a statement of Informal Procedures and Supplementary Information Concerning Adjudicatory Proceedings. This statement establishes guidelines for the completion of key phases of contested adjudications; requires periodic case status reports that will formally apprise the Commission if an adjudicatory matter is pending for longer than specified periods of time, so that the Commission can determine whether additional steps are necessary to reach a fair and timely resolution of the matter; and provides for increased and more timely disclosure concerning the Commission's adjudicatory docket through the periodic publication in the *SEC Docket* of summary statistical information concerning changes in the Commission's case load.

EFFECTIVE DATE: These rules are effective July 24, 1995.

TRANSITION PROVISION: Any administrative proceeding that has been docketed by the Commission—*i.e.*, in which an administrative proceedings file number has been assigned by the Secretary—prior to the date of this **Federal Register** publication, June 23, 1995, shall be completed pursuant to the former Rules of Practice. Any proceeding docketed by the Commission after the date of this **Federal Register** publication but prior to the effective date shall be conducted under the former Rules of Practice unless, within 30 days of the effective date, each respondent in the proceeding submits a request in writing to the Secretary that the proceedings be conducted under the Rules of Practice adopted today.

ADDRESSES: Printed copies of the revised Rules of Practice including the comments will be available from the Commission's Publications Branch, U.S. Securities and Exchange Commission, 450 Fifth Street, NW.; Stop C–11; Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Andrew Z. Glickman or Daniel O. Hirsch, Office of the General Counsel at (202) 942–0870; U.S. Securities and Exchange Commission; 450 Fifth Street, N.W.; Stop 6–6; Washington, D.C. 20549.

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TEXT OF ADOPTED RULES

I. Background

Today's adoption of comprehensive revisions to the Rules of Practice (''Rules'') of the Securities and Exchange Commission (''Commission'') and issuance of a statement of informal procedures with respect to Commission adjudications culminate an extensive review of the Commission's adjudication procedures and process. In July 1990, then-Commissioner Mary L. Schapiro was appointed chairman of the Task Force on Administrative Proceedings (''Task Force'' or ''Schapiro Task Force''). The mission of the Task Force was to review the rules and procedures relating to Commission administrative proceedings, to identify sources of delay in those proceedings and to recommend steps to make the adjudicatory process more efficient and effective.[1] Following passage of the Securities Enforcement Remedies and Penny Stock Reform Act (''Remedies Act''),[2] the Task Force greatly expanded its work to include preparing procedures to implement the authority granted to the Commission by the Remedies Act. The Task Force ultimately determined that it would be

[1] SEC Creates Task Force on Administrative Proceedings, News Release 90–39 (July 19, 1990).

[2] Pub. L. 101–429, 104 Stat. 931 (1990).

necessary and appropriate to revise completely the entire Rules of Practice.

In January 1991 and December 1991, the Schapiro Task Force presented to the Chairman interim findings and recommendations concerning the need to reduce the pending case backlog. Implementation of these recommendations included, among other things, a reorganization of the Adjudications Group within the Office of the General Counsel, significant increases in staff resources assigned to adjudicatory proceedings, and more frequent Commission meetings to consider proposed adjudicatory opinions.

In August 1992, the Secretary published approximately 400 orders issued by the Commission and administrative law judges between 1964 and 1992.[3] The previously unpublished orders, which were assembled and organized by the Task Force, concerned interpretations of the Rules of Practice or other procedural issues. The orders provide litigants with additional information about applicable procedure and thereby reduce the likelihood that previously decided issues will need to be relitigated. Also, as recommended by the Task Force, the Commission began regular publication in the *SEC Docket* of initial decisions of the administrative law judges as well as significant procedural orders.

In March 1993, the Schapiro Task Force issued its final report, *Fair and Efficient Administrative Proceedings* (''the Task Force Report'').[4] The Task Force concluded that the fundamental structure of the Commission's administrative process is sound. The Task Force found, however, that there was unnecessary delay in deciding litigated adjudicatory proceedings.[5] The Task Force recommended a comprehensive revision of the Rules of Practice and included proposed new Rules in its Report. In addition, the Task Force made various other recommendations designed to improve the efficiency and fairness of the Commission's administrative proceedings.[6] These included steps that were intended to make structural changes that would reduce the likelihood of a recurrence of the conditions that led to unnecessary delay and a backlog of pending cases.

In November 1993, the Commission published in the **Federal Register** a release proposing to adopt the Task Force's proposals pertaining to the Rules and asking interested persons for comment.[7]

II. Discussion of the Revised Rules

The Commission received seven comment letters from various interested persons.[8] Although not numerous, the comment letters as a group contained very extensive commentary on the proposed Rules. Commenters generally greeted the Commission's proposals favorably. All commenters praised the Commission's initiating a review of its Rules with the goal of further promoting fair and efficient administrative proceedings. All commenters submitted proposals to make various modifications to the Rules including many suggestions in response to the specific requests for comment contained in the proposing release. A number of comments also addressed matters not directly within the scope of the Rules. These included internal Commission management issues, such as the organizational structure of the Commission's divisions and offices, or enforcement policy issues, such as the frequency with which the Commission will initiate administrative proceedings. Significant changes to the Rules are discussed below.

A. New Organizational Structure of the Rules

The former Rules, which had not been comprehensively revised since 1960, contained requirements which were out-of-date or inconsistent with current practices and, in a few cases, inconsistent with other rules. In revising the Rules, emphasis was placed on maintaining consistency with applicable statutory language while improving intelligibility, ensuring that the Rules accurately reflected current Commission practice, and providing internal consistency in the use of terms between individual rules.

The Commission has adopted a new organizational structure and numbering system for the Rules of Practice based on model administrative rules prepared by the Administrative Conference of the United States (''ACUS''). As originally proposed, the Commission's Rules had been arranged in roughly the order in which an administrative proceeding progresses and numbered consecutively. The new format groups rules together in six broad categories based on which phase or type of proceeding they govern. The first four groups—general rules; institution of proceedings and prehearing rules; hearing rules; and rules regarding appeals to the Commission and Commission review—are predicated upon the four classifications suggested by ACUS. The two additional groups are related to specific Commission proceedings and administrative remedies and sanctions—rules regarding temporary orders, suspension of a registration and summary suspensions of trading; and rules governing disgorgement and penalty payments.

Within each group, related rules are placed together. Rules which, as proposed, covered multiple topics have been divided into shorter rules each limited to fewer topics. The new structure increases the use of rule headings and subheadings to guide a user to the appropriate rule. To the extent possible, related provisions cross-reference each other. Each of the six major groups of rules is numbered in a separate series, from 100 through 600. In addition to improving the ease of use of the rules, the new numbering system will provide the Commission with greater flexibility when future amendments and additions to the Rules occur.

B. Comments Accompanying the Rules

The Commission has prepared explanatory comments for the Rules of Practice; these comments appear with the Rules in this ''Supplementary Information'' section. The complete text of the Rules without comments appears below in Section VII. Each explanatory remark is identified as either a ''comment'' or a ''revision comment.'' ''Comments'' are statements explaining the basis for a rule, describing the rule's rationale, referencing related rules, or providing information concerning pertinent Commission practice. Comments are not a part of the rules, and are not included in the Code of Federal Regulations. The Commission believes, however, that information in the comment section will assist persons consulting the Rules in a more thorough understanding of the Rules. Printed copies of the revised Rules of Practice including the comments will be

[3] 52 SEC Docket 3, 3–792 (Aug. 18, 1992).

[4] Task Force on Administrative Proceedings, Securities and Exchange Commission, *Fair and Efficient Administrative Proceedings: Report of the Task Force* (Feb. 1993) [hereinafter *Task Force Report*].

[5] *Id.* at 13. *See also id.* at 19–22 (summary of statistical data concerning proceedings adjudicated from 1982 through 1992).

[6] *Id.* 12–19.

[7] Proposed Rules of Practice, Exchange Act Release No. 33163, 58 FR 61732 (Nov. 22, 1993). Most of the rules in the Rules of Practice deal with agency procedure and practice and are exempt from the Administrative Procedure Act's notice and comment requirement for rulemaking, 5 U.S.C. 553(b)(3). Consistent with the recommendation of the Task Force, though, all the Rules were published for comment. *See Task Force Report, supra* note 4, at 12.

[8] The comment letters may be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549, File No. S7–40–92.

available from the Commission's Publications Branch, U.S. Securities and Exchange Commission; 450 Fifth Street, N.W.; Stop C–11; Washington, D.C. 20549. A copy of this publication will be provided to each respondent by the Secretary at the commencement of proceedings.

''Revision comments'' are statements explaining changes from the proposed Rules to the adopted Rules. In addition, revision comments include, where appropriate, a brief discussion of responses to the requests for comment in the proposing release.

C. Summary of Major Changes to the Rules From the Former Rules

This section contains a capsule summary of major changes from the former Rules.

1. *Temporary cease-and-desist orders.* The Rules include procedures for the issuance of a temporary cease-and-desist order (''TCDO'').[9–10] Rules 510, 511 and 512 contain the application procedures, notice requirements, hearing procedures and issuance requirements for TCDO's. Rule 513 contains additional requirements for *ex parte* issuance of a TCDO. Rule 514 sets forth the availability of judicial review and the duration of a TCDO. Rule 530 governs special procedures relating to issuance of an initial decision whether to enter a permanent order if a temporary order is pending. Rules 531 and 540 govern Commission review of that initial decision, and duration of the temporary order pending that review.

The Division of Enforcement may file an application for a TCDO simultaneously with or after the commencement of proceedings seeking a permanent cease-and-desist order with respect to a registered entity or associated person.[11] The application must be accompanied by a declaration of facts signed by a person with knowledge of the facts contained therein; a memorandum of points and authorities; a proposed order imposing the temporary relief sought; and, unless relief is sought *ex parte,* a proposed notice of hearing and order to show cause whether the temporary relief should be imposed. If a proceeding for a permanent cease-and-desist order has not already been commenced, the Division must also file a proposed order instituting proceedings to determine whether a permanent cease-and-desist order should be imposed.

Unless the conditions warranting issuance of an *ex parte* order are met, a respondent shall be served with the application and additional papers and a hearing on the application shall be scheduled.

If a respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may apply to the Commission to have the order set aside, limited, or suspended, and if the application is made within 10 days after the date on which the order was served, may request a hearing on such application. The Commission shall hold a hearing and render a decision on such an application at the earliest possible time. The hearing shall begin within two days of the filing of the application unless the applicant consents to a longer period or the Commission, by order, for good cause shown, sets a later date. If the Commission does not render its decision within 10 days of the application or such longer time as consented to by the applicant, the temporary order shall be suspended until a decision is rendered.

A temporary cease-and-desist order may be appealed to a federal district court within 10 days of service of an order entered with prior notice, or within 10 days after the Commission's issuance of its decision upon a respondent's application to set aside, limit or suspend an *ex parte* order.

After issuance of a temporary cease-and-desist order, the proceeding to determine whether to enter a permanent order shall go forward with a hearing before a hearing officer and the issuance of an initial decision. The Rules establish procedures with respect to expedited consideration of any appeal of the initial decision. The Rules also set forth limitations on the duration and scope of the temporary cease-and-desist order pending issuance of the Commission's opinion on review of the initial decision.

2. *Suspension of Registered Entity.* Rules 520, 521, 522 and 524 include extensive revisions to the provisions of former Rule 19 relating to the suspension of a registered broker or dealer pending a final determination whether the registration shall be revoked. Consistent with amendments to the Securities Exchange Act, the new rules apply to a municipal securities dealer, government securities broker, government securities dealer, or transfer agent as well as a broker or dealer. Where possible, the new procedures for suspensions pending a final determination whether to revoke a registration parallel the procedures relating to temporary cease-and-desist orders.

3. *Disgorgement.* The 600 series of the revised Rules contains new provisions governing payment of disgorgement, interest and penalties. Rule 600 requires prejudgment interest to be assessed on any sum required to be paid pursuant to an order of disgorgement. The rate of interest is set at the IRS underpayment rate and compounded quarterly unless the Commission specifies a lower rate with respect to funds placed in an approved escrow. Under Rule 601 unless otherwise provided, funds due pursuant to an order by the Commission requiring the payment of disgorgement, interest or penalties must be paid no later than 21 days after service of the order. After disgorgement has been paid, a proposed plan of disgorgement will be submitted pursuant to Rule 610.

Rule 611 lists the required elements of such disgorgement plan. A plan may provide for distribution of funds to investors or to a court registry or court-appointed receiver for injured investors. Where return of disgorged funds to investors is not justified, funds may be paid to the U.S. Treasury. Rule 612 requires that notice of a proposed plan be published in the *SEC News Digest* and the *SEC Docket* and other publications as required. A plan may be approved, approved with modifications, republished for additional comments or disapproved pursuant to Rule 613. Rule 614 contains provisions governing the administration of an approved plan.

Rule 620 addresses conditions under which a non-party will be granted leave to intervene or to participate in a proceeding for the purpose of challenging a disgorgement order or plan of disgorgement. The Rule provides that no person shall be granted leave to intervene or to participate for such a purpose based solely upon that person's eligibility or potential eligibility to participate in a disgorgement fund or based upon any private right of action such person may have against any person who is also a respondent in an enforcement proceeding.

Persons claiming an inability to pay disgorgement, interest or a penalty must do so in accordance with Rule 630. A respondent who asserts inability to pay may be required to file a sworn financial statement and to keep the statement current. Failure to file a required statement may be deemed a waiver of the claim of inability to pay.

4. *Expanded Role for Prehearing Conferences.* The Rules significantly expand the role of prehearing

[9–10] Rules 510–514, 530, 531 and 540.

[11] Prior to filing an application for temporary relief, the staff would, in all cases, have to obtain authority to seek a temporary order from the Commission. As with any other decision to initiate enforcement action prior to the institution of proceedings, Commission deliberations and discussions with the staff concerning the decision whether to authorize an application for temporary relief would be nonpublic, privileged, and not ordinarily reviewable by a court.

conferences and encourage more active prehearing case management by administrative law judges. Under the proposed rule, no initial prehearing conference was required. In accordance with suggestions by commenters, revised Rule 221 requires that except where the emergency nature of a proceeding would make a prehearing conference clearly inappropriate, both an initial and a final prehearing conference shall be held. The initial conference is to be held within 14 days of service of an answer, or if no answer is required, within 14 days of the issuance of an order instituting proceedings. The final conference is to be held as close to the beginning of the hearing as is reasonable.

The Rules make an initial prehearing conference mandatory in most cases because such a conference can eliminate unnecessary delay and improve the quality of adjudicative decisionmaking by sharpening the preparation of cases and presentation of issues. The increased role for prehearing conferences will facilitate the new procedures that provide for access to certain categories of investigation file documents in enforcement and disciplinary proceedings and for the prehearing production of documents pursuant to subpoena.

5. *Prehearing Access to Certain Investigative Documents.* Pursuant to new Rule 230, in an enforcement or disciplinary proceeding, the Division of Enforcement will provide any party with an opportunity for inspection and copying of certain categories of documents obtained by the Division in connection with the investigation leading to the Division's recommendation to institute proceedings. The rule codifies the prevailing practice of the Division of Enforcement staff in the Headquarters Office and various regional offices. A respondent's right to inspect and copy documents under this Rule is automatic; the respondent does not need to make a formal request for access through the hearing officer.

Documents to which access must be provided include: (1) Each subpoena issued; (2) every other written request to persons not employed by the Commission to provide documents or to be interviewed; (3) the documents turned over in response to any such subpoenas or other written requests; (4) all transcripts and transcript exhibits; (5) any other documents obtained from persons not employed by the Commission; and (6) any final examination or inspection reports prepared by the Division of Market Regulation or the Division of Investment Management. The Division of Enforcement's obligation under this rule relates only to documents obtained by the Division of Enforcement. Documents located only in the files of other divisions or offices are beyond the scope of the rule.

The Division of Enforcement may withhold a document if: (1) The document is privileged; (2) the document is an internal memorandum, note or writing prepared by a Commission employee, other than certain examination or inspection reports prepared by the Divisions of Market Regulation or Investment Management, or is otherwise attorney work-product and will not be offered in evidence; (3) the document would disclose the identity of a confidential source; or (4) the hearing officer grants leave to withhold a document or category of documents as not relevant to the subject matter of the proceeding or otherwise, for good cause shown.

Rule 230 is not the exclusive means by which a respondent may obtain access to documents. Production of documents prepared by the staff may be required under the doctrine of *Brady* v. *Maryland,* 373 U.S. 83 (1963), or pursuant to Jencks Act requirements made applicable to the Commission pursuant to rule, or may be sought by subpoena or through other procedures. *See, e.g.,* the Freedom of Information Act, 5 U.S.C. 552.

The document access policy in Rule 230 has been revised significantly from the proposed rule. Under the proposed rule, the staff was required to make a relevancy determination before a document would be produced. The Commission decided to change this rule, based in part upon comments received that contended that a relevancy determination by the staff was problematic.[12]

6. *Prehearing Document Production Pursuant to Subpoena.* Rule 232(a) allows for production of documents pursuant to subpoena prior to the start of a hearing. The Rule states that a party may request ''subpoenas requiring the production of documentary or other tangible evidence returnable at any designated time or place.'' Under former Rule 14(b)(1), such documents were only to be turned over at the hearing. As adopted, the rule will reduce delay and eliminate the need for postponements by allowing for documents to be reviewed and copied, and for proposed exhibits to be selected, all prior to a final prehearing conference.

7. *Summary Disposition.* Under former Rule 11(e), a motion that would dispose of a proceeding in whole or in part could not be made, or considered by a hearing officer, prior to the completion of the interested division's case or the conclusion of the hearing. *See* 17 CFR 201.11(e) (1994). Rule 250 makes substantial changes to these procedures. The Rule provides for a motion for summary disposition by any party after each party required to file an answer has done so and, in an enforcement or disciplinary proceeding, after documents have been made available to the respondent for inspection and copying. If the interested division has not completed presentation of its case in chief at the hearing, a summary decision motion may be made only with leave of the hearing officer. The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noted. In accordance with suggestions of a commenter, the Rule now provides that if a party cannot, for good cause, present facts essential to justify opposition to the motion by affidavit prior to hearing, the hearing officer shall deny the motion.

A motion for summary disposition is subject to a 35-page limit.

8. *Protective Orders.* The revised Rules contain provisions allowing certain persons involved in an evidentiary hearing to obtain a protective order for confidential information. Documents and testimony introduced in a public hearing are presumed to be public. Rule 322 allows any party intending to introduce material as evidence during a hearing, any person who is the subject or creator of such material, or any witness who testifies at a hearing to file a motion requesting a protective order for such material or testimony. A protective order shall be granted only upon a finding that the harm resulting from disclosure would outweigh the benefits of disclosure.

The former Rules of Practice contained a confidential treatment provision that related solely to applications for materials filed in connection with registration statements and other statutorily required filings; it required that confidential treatment be sought at the time of filing. *See* 17 CFR 201.25 (1994). Proposed Rule 33 would have responded to this situation by

[12] Specifically, it was suggested that the proposed standard might deny respondents access to documents that ''while possibly not directly relevant to any of the Commission's allegations, may bear directly on the lines of defense the respondent is developing.'' ABA comment letter dated Feb. 28, 1994, at 59. It was also suggested that asking the staff to make such a determination was inappropriate because of the staff's ''outlook and allegiance.'' *Id.*

allowing a party to seek confidential treatment under any ''applicable statute or rule,'' without limiting the scope of materials sought to be protected or the timing of the application.

The Commission has decided that a separate rule for protective orders would be more efficient and easier for adjudicatory litigants to use than a rule that encompassed not only protective orders, but also requests for confidential treatment under the federal securities laws [13] or the Freedom of Information Act.[14]

9. *Service.* The rule for service of orders by the Commission, Rule 141, and the rule for service of papers by parties, Rule 150, contain a number of revisions. Rule 141 contains new provisions specifically addressing service upon persons in a foreign country and upon persons currently registered with the Commission. Rule 141 also contains a new provision allowing a waiver of formal service to permit a party to accept service by facsimile transmission. For parties wishing to use facsimile transmission to serve one another, Rule 150 allows delivery of papers by fax when two conditions are met: (i) there must be a written agreement between the persons intending to serve each other by fax specifying such terms as they deem necessary with respect to telephone numbers, hours of facsimile operation, provision of paper original or other matters; and (ii) receipt of each document served by fax must be confirmed by a manually signed receipt delivered by fax or other means agreed to by the parties. These conditions are intended to ensure that service by fax will be both an efficient and an effective means of service.

D. Technical Changes and Appendices

A number of technical changes have been made and appendices created in order to implement the Rules. First, former Rule 24 concerning incorporation by reference, which related to the making of disclosure or regulatory filings has been moved from the Rules of Practice to Regulation S–K section 10, paragraph (d) (17 CFR 229.10(d); a comparable provision has been added to Regulation S–B section 10, paragraph (f) (17 CFR 228.10(f)). Second, Commission procedures for summary suspensions pursuant to Section 12(k) of the Exchange Act, 15 U.S.C. 78*l*(k), have been moved from Part 202 of 17 CFR into new Rule 550. Third, new cross-reference tables showing the location of the former rules in the revised rules and vice versa have been included in an appendix to appear in the Code of Federal Regulations. Finally, all references to the Rules of Practice in the Commission's other rules and forms have been updated.

III. Discussion of the Statement of Informal Procedures and Supplemental Information Concerning Adjudicatory Proceedings

In 1990, at the time the Schapiro Task Force was created, there was significant delay in the disposition of administrative proceedings. For example, in fiscal years 1991 and 1992, the Commission issued a total of 10 opinions in Commission-initiated administrative proceedings. These 10 cases took an average of four years from institution of proceedings to conclusion.[15]

Interim recommendations made by the Task Force to eliminate unnecessary delay and reduce the backlog were implemented in 1991 and 1992. The Commission reorganized the Adjudications Group within the Office of the General Counsel and appointed new senior staff to supervise the adjudicatory work assigned to the Office of the General Counsel. On a Commission-wide basis, the total number of staff assigned to adjudicatory matters was increased over three fold. For approximately one year attorneys throughout the General Counsel's Office assisted the Adjudications Group in preparing opinions for the Commission. Further, the Commission gave greater priority to adjudicatory matters, held oral arguments on a more timely basis, and met to consider proposed opinions more frequently.[16]

In fiscal year 1994, the number of new appeals to the Commission declined and the number of cases resolved increased compared with the prior year. As a result, in fiscal year 1994 the pending appellate caseload declined for the first time in over a decade. In addition, the number of cases pending on appeal for more than one year has declined significantly from the level of four years ago.

Despite these strides, the Commission's past experience strongly suggests that additional steps should be taken, especially given the increase in proceedings assigned to the administrative law judges [17] and the likelihood that the number and complexity of new appeals may increase again in coming years. Backlogs in the Commission's disposition of adjudicatory proceedings have recurred periodically over at least the past 30 years.[18] The Task Force examined prior efforts to address delay in the administrative proceedings process, and considered why earlier ''solutions'' gave way to new backlogs.

The Task Force considered various alternatives aimed at eliminating systemic causes of the recurring backlog problems. In its Report, the Task Force recommended: (1) That the Commission establish guidelines for the timely completion of adjudicatory proceedings; (2) that the Commission be specifically apprised of matters not completed within designated periods, so that the Commission has a specific opportunity to determine what, if any, steps to take to advance the fair and timely resolution of those particular matters; and (3) that the Commission make increased public disclosure of the status of the pending case docket and changes in its case load.

The Statement of Informal Procedures and Supplementary Information Concerning Adjudicatory Proceedings (''Statement of Informal Procedures'') adopts, with modifications, these three recommendations. Implementation of these recommendations will increase accountability for the timely and efficient completion of adjudicatory proceedings and consolidate on a more permanent basis the improvements in the adjudications process made since the creation of the Task Force.

A. Guidelines for the Timely Completion of Proceedings

The Guidelines For the Timely Completion of Proceedings provide that an administrative law judge's initial

[13] *See* Clause 30 of Schedule A of the Securities Act of 1933, 15 U.S.C. 77aa(30), and Rule 406 thereunder, 17 CFR 230.406; Section 24(b)(2) of the Securities Exchange Act of 1934, 15 U.S.C. 78x(b)(2), and Rule 24b–2 thereunder, 17 CFR 240.24b–2; Section 22(b) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79v(b), and Rule 104 thereunder, 17 CFR 250.104; Section 45(a) of the Investment Company Act of 1940, 15 U.S.C. 80a–44(a), and Rule 45a–1 thereunder, 17 CFR 270.45a–1; and Section 210(a) of the Investment Advisers Act of 1940, 15 U.S.C. 80b–10(a). *See* also Rule of Practice 190, 17 CFR 201.190 (specifying procedures by which registrants may request confidential treatment of certain information contained in regulatory filings).

[14] *See* 17 CFR 200.83 (providing for procedures by which persons submitting information to the Commission can request that the information not be disclosed pursuant to a request under the Freedom of Information Act, 5 U.S.C. § 552).

[15] *See* Task Force Report, *supra* note 4, at 20–22.

[16] Also pursuant to a recommendation of the Task Force, the Office of the General Counsel organized a conference with self-regulatory organizations, held in June 1994, to address problems of mutual concern. Changes in adjudicatory procedures or practices by the self-regulatory organizations resulting from the conference may eliminate or simplify certain issues that would otherwise be appealed to the Commission.

[17] There were 56 cases pending before the administrative law judges as of October 1, 1994, up from 32 cases on October 1, 1993 and 25 cases on October 1, 1992.

[18] *See* Task Force Report, *supra* note 4, at 33 n.46.

decision should be filed within 10 months of issuance of the order for proceedings and that a decision by the Commission on appeal of an initial decision, review of a self-regulatory organization determination or remand of a prior decision by a court of appeals should be issued within 11 months of the filing of a petition for review or application for review or the issuance of a mandate of the court.[19]

The primary purposes of the guidelines are to provide a basis to gauge the Commission's and administrative law judges' productivity in issuing opinions, and to permit the allocation of appropriate Commission, management and staff resources for the timely completion of proceedings. Establishment of guidelines by the Commission indicates the priority of adjudicatory matters for the Commission, as well as for persons delegated authority or assigned responsibility for adjudicatory matters. Among other benefits, the guidelines can lend important authority to the deadlines set by the administrative law judges for hearing dates and pre- and post-hearing submissions, and by the General Counsel and the Secretary for oral argument dates and the filing of briefs.

The Schapiro Task Force had recommended that ''normative guidelines'' for the completion of adjudicatory proceedings be included in the Rules of Practice themselves. The existing Rules of Practice use this approach in some instances,[20] and other federal agencies and departments also have used similar approaches.[21] The Commission believes, however, that since the guidelines are not themselves rules, it is preferable to publish them in a supplemental statement, and thereby eliminate a potential source of confusion or collateral litigation concerning their status as non-binding criteria for monitoring the age of pending cases rather than a legal standard. This approach is consistent with the publication in the Code of Federal Regulation of other non-binding, informal procedures.[22]

The guidelines do not create a requirement that each portion of a proceeding or the entire proceeding be completed within the periods described. Proceedings at either the hearing stage or on review by the Commission may require additional time because they are unusually complex or because the record is exceptionally long or for other reasons. In addition, fairness to all parties requires that the Commission's deliberative process not be constrained by an inflexible schedule. In some proceedings, deliberation may be delayed by the need to consider more urgent matters, to permit the preparation of dissenting opinions or for other good cause. The guidelines will be used by the Commission as one of several criteria in monitoring and evaluating its adjudicatory program.

As noted in the supplemental statement, the guidelines adopted today will need to be examined periodically and may need to be readjusted in light of changes in the Commission's case load and the availability of Commission resources.

One alternative approach, considered by the Task Force, was to set fixed deadlines for the issuance of initial decisions and Commission opinions, and to provide for a remedy, such as dismissal, if cases were not completed within the deadline. Applying this approach to adjudicatory proceedings, including enforcement actions and review of self-regulatory organization determinations, places too great a premium on the benefits of achieving resolution of a proceeding, without due consideration to the resolution reached. In light of its broad responsibilities, the Commission should retain the flexibility to delay the resolution of proceedings in order to address higher priority matters, without abandoning the opportunity to adjudicate issues properly before it, particularly those relating to whether the protection of the public or investors requires that a securities law violator be subject to remedial sanctions.

B. Reports to the Commission on Pending Cases

Prior reviews of the administrative process concluded that delegation of certain functions to the staff is desirable, as it frees the Commission from having to deal with routine matters and can expedite Commission action.[23] Unmonitored delegation, however, can also create a source of delay. The Schapiro Task Force observed that, once a case is assigned to an administrative law judge or to the staff, ''there is no procedure to return cases to the Commission for a status conference if significant milestones are not reached or no opinion is prepared within specified periods.''[24] The Task Force recommended that if a case does not proceed through each major phase on a timely basis, it should automatically be returned to the Commission to determine whether any additional steps should be taken to advance the resolution of the case. The Task Force stated that ''[b]y establishing this procedure, the Commission will require the staff to identify non-routine matters, shortages in staff or other impediments that are preventing the timely completion of delegated decisionmaking.''[25]

In response to this recommendation, one commenter advocated that the Commission should ''encourage more ALJ autonomy and thereby avoid SEC involvement between the times when cases are authorized and appealed.''[26] Accordingly, this commenter suggested, unless absolutely necessary, interim Commission review of cases assigned to an administrative law judge should not occur, even on a case management basis such as for status conferences. The commenter suggested, as an alternative to status conferences, that the administrative law judges have a periodic requirement to report any case backlog to the Commission and the public. The Commission has modified the recommendation of the Schapiro Task Force to address the concerns raised by this commenter.

Under the informal procedures adopted today, a requirement formally to apprise the Commission of proceedings beyond a specified age is being integrated into a case status reporting system overseen by the Secretary. Use of written status reports as a tool to improve docket control is a widely accepted practice. For example, federal court judges are required to report periodically to the Office of United States Courts on the status of certain matters pending beyond specified periods. Face-to-face status conferences between the Commission and an administrative law judge, or discussion of the merits of a proceeding, will not be a part of the more formal case status reporting system.

Periodically, confidential status reports with respect to all filed

[19] The guidelines also set 45 days for a Commission decision on interlocutory matters, and up to 45 days to decide a motion for stay, depending upon whether the action to be stayed has already taken effect.

[20] *See, e.g.,* former Rule 16(e), 17 CFR 201.16(e) (1994) (period prescribed for filing of proposed findings and conclusions ''normally should be no more than 30 days after the close of the hearing, and if the hearing officer directs that the first filing be made at a date later than 30 days after the close of the hearing, the reasons for so doing shall be stated in his order'').

[21] *See, e.g.,* 37 CFR 10.139(c) (ALJ in Patent and Trademark Office, Dept. of Commerce, shall normally issue initial decisions in disciplinary cases within six months of the date a complaint is filed).

[22] *See, e.g.,* 17 CFR 202.

[23] *Task Force Report, supra* note , at 32–33.

[24] *Id.* at 33.

[25] *Id.* at 42.

[26] ABA comment letter to Commissioner Mary Schapiro on the Report of the Task Force on Administrative Proceedings dated Nov. 10, 1993, at 8.

adjudicatory proceedings shall be made to the Commission. The Chief Administrative Law Judge shall report on proceedings assigned to an administrative law judge. The General Counsel shall report on proceedings assigned to the Office of the General Counsel, as well as any other pending proceedings. These status reports shall be made through the Secretary, with a minimum frequency established by the Commission. In connection with these reports, the Chief Administrative Law Judge and the General Counsel shall specifically apprise the Commission of any proceeding that exceeds the guidelines established for the timely completion of proceedings by more than 30 days. The report shall describe the procedural posture of any such proceeding, estimate a date for conclusion of the proceeding, and provide such other information as is necessary to enable the Commission to determine whether additional steps are necessary to reach a fair and timely resolution of the matter.

In some cases, additional resources may be necessary to free an administrative law judge or staff to address a matter of unusually large size or exceptional complexity.[27] In some instances, consultation with the Commission by the General Counsel may speed the completion of a particular case. In others, the length of the hearing, the number or respondents, the complexity of a case or the urgency of other matters may justify delay in reaching a decision at a delegated level, in which case no action in response to the status report would be needed. Coupled with the guidelines for the timely completion of proceedings, however, the use of a comprehensive and formalized case status reporting system will provide greater assurance that the resolution of a proceeding that has been delayed will be treated as a priority matter.

As noted by the Schapiro Task Force, an increasing number of status reports concerning cases that are not completed within the guidelines may provide an ''early warning signal'' that additional resources are necessary. Had a more detailed and more formal case status reporting requirement been in effect in the mid-1980's, the Commission might have been in a better position to address the developing case backlog before it gained the magnitude it had reached by 1990 when the Task Force was created.

The Commission believes that the case status reporting requirements announced today will fulfill the purpose of the Schapiro Task Force recommendation discussed above by establishing a mechanism that will automatically address cases that are not timely resolved and by increasing accountability by and to the Commission for management of the docket.

The Task Force recommended that the requirement to formally apprise the Commission if a proceeding is not completed within specified periods should be implemented through changes in the Commission's formal delegations to the administrative law judges, the Secretary, and the General Counsel. See 17 CFR 200.30–1 *et. seq.* The Commission believes that publication of these case status reporting procedures in the Statement of Informal Procedures will be equally effective in implementing this recommendation.

C. Increased Public Disclosure Concerning the Pending Case Docket

The Task Force recommended publishing more information concerning the status of the Commission's adjudicatory docket.[28] Ongoing disclosure of information about the adjudication program caseload increases awareness of the importance of the program, facilitates oversight of the program, and promotes public confidence in the efficiency and fairness of the program. Under the procedures adopted today, the Secretary will publish each October and April in the *SEC Docket* summary statistical information about the status of the pending adjudicatory docket and changes in the Commission's caseload over the prior six months.[29]

The Commission will also continue to follow the Task Force recommendation that it adopt the practice of several federal courts of appeals by publishing with each opinion the date the appeal or review was commenced and the date of oral argument, if any.

The Task Force suggested publication of information about the Commission's caseload in the Annual Report. Although a useful adjunct to publication in the *SEC Docket*, publication in the Annual Report alone is not sufficient. The *Docket* is more widely available (both on commercial database services and in other places such as libraries) than the Annual Report. In addition, publication in the *Docket* allows more frequent and more timely disclosure.

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[27] For example, additional administrative law judges might be necessary on a temporary basis, *see, e.g.*, 5 U.S.C. 3344, to allow the judge assigned responsibility for a proceeding to complete that proceeding without the burden of new cases, or additional law clerks, paralegals or other staff might be needed on temporary assignment.

[28] *See* Recommendation 4, *Task Force Report, supra* note , at 43–44.

[29] The report shall include the number of cases pending before the administrative law judges and the Commission at the beginning and end of the six-month period. The report shall also show increases in the caseload arising from new cases being instituted, appealed or remanded to the Commission, and decreases in the caseload arising from the disposition of proceedings by issuance of initial decisions, issuance of final decisions issued on appeal of initial decisions, other dispositions of appeals of initial decisions, final decisions on review of self-regulatory organization determinations, other dispositions on review of self-regulatory organization determinations, and decisions with respect to stays or interlocutory motions. For each category of decision, the report shall also show the median age of the cases at the time of the decision and the number of cases decided within the guidelines for the timely completion of adjudicatory proceedings.

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General Rules

Rule 100. Scope of the Rules of Practice

(a)Unless provided otherwise, these Rules of Practice govern proceedings before the Commission under the statutes that it administers.

(b) These rules do not apply to:

(1) investigations, except where made specifically applicable by the Rules Relating to Investigations, part 203 of this chapter; or

(2) actions taken by the duty officer pursuant to delegated authority under 17 CFR 200.43.

Comment: The Rules of Practice govern a wide range of Commission processes, including Commission-initiated enforcement and disciplinary proceedings, proceedings to review disciplinary actions initiated by self-regulatory organizations and certain other self-regulatory decisions, proceedings to review Commission staff decisions made pursuant to delegated authority, and proceedings in which an exemptive application is contested and a hearing ordered. Certain agency processes are specifically excluded from the scope of the Rules. First, Commission investigations are not governed by the Rules unless a rule explicitly provides otherwise. *See, e.g.,* Rule 240 (concerning offers of settlement); *see also* 17 CFR 203.8 (service of subpoenas in formal investigations is governed by Rule 232). Second, these Rules do not cover an appeal from a decision of the duty officer. Rules governing appeals of such decisions are contained in 17 CFR 200.43(c).

Each rule indicates whether that rule applies generally to all proceedings, or only to a particular category of proceedings, such as ones in which an order instituting proceedings has been entered. A majority of the Rules address procedures in those matters where the Commission has ordered an evidentiary hearing pursuant to an order instituting proceedings. When an order instituting proceedings has been entered, it may specify particular procedures to be used in the proceeding to which it applies.

The Administrative Procedure Act (''APA''), 5 U.S.C. 551 *et seq.*, is the source of various provisions of the Rules. In addition, in any particular proceeding the APA may govern the Rules or the specific procedures that the Commission is required to employ. Which requirements of the Administrative Procedure Act are applicable to a particular Commission proceeding depends on the language of the statute authorizing the proceeding. An adjudication is subject to the requirements of 5 U.S.C. 554, 556 and 557 if the Commission is authorized by statute to make its determination ''on the record, after notice and opportunity for an agency hearing.'' Such adjudications are often referred to as ''on the record'' or formal adjudications. Other adjudications, including those where the Commission is authorized by statute to make its determination ''after opportunity for hearing,'' are often referred to as informal adjudications. *See* Rules 191 and 326 and associated comments.

Rule 101. Definitions

(a) For purposes of these Rules of Practice, unless explicitly stated to the contrary:

(1) *Commission* means the United States Securities and Exchange Commission, or a panel of Commissioners constituting a quorum of the Commission, or a single Commissioner acting as duty officer pursuant to 17 CFR 200.43;

(2) *counsel* means any attorney representing a party or any other person representing a party pursuant to Rule 102(b);

(3) *disciplinary proceeding* means an action pursuant to Rule 102(e);

(4) *enforcement proceeding* means an action, initiated by an order instituting proceedings, held for the purpose of determining whether or not a person is about to violate, has violated, has caused a violation of, or has aided or abetted a violation of any statute or rule administered by the Commission, or whether to impose a sanction as defined in section 551(10) of the Administrative Procedure Act, 5 U.S.C. 551(10);

(5) *hearing officer* means an administrative law judge, a panel of Commissioners constituting less than a quorum of the Commission, an individual Commissioner, or any other person duly authorized to preside at a hearing;

(6) *interested division* means a division or an office assigned primary responsibility by the Commission to participate in a particular proceeding;

(7) *order instituting proceedings* means an order issued by the Commission commencing a proceeding or an order issued by the Commission to hold a hearing;

(8) *party* means the interested division, any person named as a respondent in an order instituting proceedings, any applicant named in the caption of any order, persons entitled to notice in a stop order proceeding as set forth in Rule 200(a)(2) or any person seeking Commission review of a decision;

(9) *proceeding* means any agency process initiated by an order instituting proceedings; or by the filing, pursuant to Rule 410, of a petition for review of an initial decision by a hearing officer; or by the filing, pursuant to Rule 420, of an application for review of a self-regulatory organization determination; or by the filing, pursuant to Rule 430, of a notice of intention to file a petition for review of a determination made pursuant to delegated authority;

(10) *Secretary* means the Secretary of the Commission; and

(11) *temporary sanction* means a temporary cease-and-desist order or a temporary suspension of the registration of a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or transfer agent pending final determination whether the registration shall be revoked.

(b) [Reserved]

Rule 102. Appearance and Practice Before the Commission

A person shall not be represented before the Commission or a hearing officer except as stated in paragraphs (a) and (b) of this rule or as otherwise permitted by the Commission or a hearing officer.

(a) *Representing Oneself.* In any proceeding, an individual may appear on his or her own behalf.

(b) *Representing Others.* In any proceeding, a person may be represented by an attorney at law admitted to practice before the Supreme Court of the United States or the highest court of any State (as defined in Section 3(a)(16) of the Exchange Act, 15 U.S.C. 78c(a)(16)); a member of a partnership may represent the partnership; a bona fide officer of a corporation, trust or association may represent the corporation, trust or association; and an officer or employee of a state commission or of a department or political subdivision of a state may represent the state commission or the department or political subdivision of the state.

(c) *Former Commission Employees.* Former employees of the Commission must comply with the restrictions on practice contained in the Commission's Conduct Regulation, Subpart M, 17 CFR 200.735.

(d) *Designation of Address for Service; Notice of Appearance; Power of Attorney; Withdrawal.*

(1) *Representing Oneself.* When an individual first makes any filing or otherwise appears on his or her own behalf before the Commission or a hearing officer in a proceeding as defined in Rule 101(a), he or she shall file with the Commission, or otherwise state on the record, and keep current, an address at which any notice or other written communication required to be served upon him or her or furnished to him or her may be sent and a telephone number where he or she may be reached during business hours.

(2) *Representing Others.* When a person first makes any filing or otherwise appears in a representative capacity before the Commission or a hearing officer in a proceeding as defined in Rule 101(a), that person shall file with the Commission, and keep current, a written notice stating the name of the proceeding; the representative's name, business address and telephone number; and the name and address of the person or persons represented.

(3) *Power of Attorney.* Any individual appearing or practicing before the Commission in a representative capacity may be required to file a power of attorney with the Commission showing his or her authority to act in such capacity.

(4) *Withdrawal.* Withdrawal by any individual appearing in a representative capacity shall be permitted only by order of the Commission or the hearing officer. A motion seeking leave to withdraw shall state with specificity the reasons for such withdrawal.

(e) *Suspension and Disbarment.*

(1) *Generally.* The Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission after notice and opportunity for hearing in the matter:

(i) not to possess the requisite qualifications to represent others; or

(ii) to be lacking in character or integrity or to have engaged in unethical or improper professional conduct; or

(iii) to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

(2) *Certain Professionals and Convicted Persons.* Any attorney who has been suspended or disbarred by a court of the United States or of any State; or any person whose license to practice as an accountant, engineer, or other professional or expert has been revoked or suspended in any State; or any person who has been convicted of a felony or a misdemeanor involving moral turpitude shall be forthwith suspended from appearing or practicing before the Commission. A disbarment, suspension, revocation or conviction within the meaning of this rule shall be deemed to have occurred when the disbarring, suspending, revoking or convicting agency or tribunal enters its judgment or order, including a judgment or order on a plea of nolo contendere, regardless of whether an appeal of such judgment or order is pending or could be taken.

(3) *Temporary Suspensions.* An order of temporary suspension shall become effective upon service on the respondent. No order of temporary suspension shall be entered by the Commission pursuant to paragraph (e)(3)(i) of this rule more than 90 days after the date on which the final judgment or order entered in a judicial

or administrative proceeding described in paragraph (e)(3)(i)(A) or (e)(3)(i)(B) has become effective, whether upon completion of review or appeal procedures or because further review or appeal procedures are no longer available.

(i) The Commission, with due regard to the public interest and without preliminary hearing, may, by order, temporarily suspend from appearing or practicing before it any attorney, accountant, engineer, or other professional or expert who has been by name:

(A) permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder; or

(B) found by any court of competent jurisdiction in an action brought by the Commission to which he or she is a party or found by the Commission in any administrative proceeding to which he or she is a party to have violated (unless the violation was found not to have been willful) or aided and abetted the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

(ii) Any person temporarily suspended from appearing and practicing before the Commission in accordance with paragraph (e)(3)(i) of this rule may, within 30 days after service upon him or her of the order of temporary suspension, petition the Commission to lift the temporary suspension. If no petition has been received by the Commission within 30 days after service of the order, the suspension shall become permanent.

(iii) Within 30 days after the filing of a petition in accordance with paragraph (e)(3)(ii) of this rule, the Commission shall either lift the temporary suspension, or set the matter down for hearing at a time and place designated by the Commission, or both, and, after opportunity for hearing, may censure the petitioner or disqualify the petitioner from appearing or practicing before the Commission for a period of time or permanently. In every case in which the temporary suspension has not been lifted, every hearing held and other action taken pursuant to this paragraph (e)(3) shall be expedited in accordance with Rule 500. If the hearing is held before a hearing officer, the time limits set forth in Rule 531 will govern review of the hearing officer's initial decision.

(iv) In any hearing held on a petition filed in accordance with paragraph (e)(3)(ii) of this rule, the staff of the Commission shall show either that the petitioner has been enjoined as described in paragraph (e)(3)(i)(A) of this rule or that the petitioner has been found to have committed or aided and abetted violations as described in paragraph (e)(3)(i)(B) of this rule and that showing, without more, may be the basis for censure or disqualification. Once that showing has been made, the burden shall be upon the petitioner to show cause why he or she should not be censured or temporarily or permanently disqualified from appearing and practicing before the Commission. In any such hearing, the petitioner may not contest any finding made against him or her or fact admitted by him or her in the judicial or administrative proceeding upon which the proceeding under this paragraph (e)(3) is predicated. A person who has consented to the entry of a permanent injunction as described in paragraph (e)(3)(i)(A) of this rule without admitting the facts set forth in the complaint shall be presumed for all purposes under this paragraph (e)(3) to have been enjoined by reason of the misconduct alleged in the complaint.

(4) *Filing of Prior Orders.* Any person appearing or practicing before the Commission who has been the subject of an order, judgment, decree, or finding as set forth in paragraph (e)(3) of this rule shall promptly file with the Secretary a copy thereof (together with any related opinion or statement of the agency or tribunal involved). Failure to file any such paper, order, judgment, decree or finding shall not impair the operation of any other provision of this rule.

(5) *Reinstatement.* (i) An application for reinstatement of a person permanently suspended or disqualified under paragraph (e)(1) or (e)(3) of this rule may be made at any time, and the applicant may, in the Commission's discretion, be afforded a hearing; however, the suspension or disqualification shall continue unless and until the applicant has been reinstated by the Commission for good cause shown.

(ii) Any person suspended under paragraph (e)(2) of this rule shall be reinstated by the Commission, upon appropriate application, if all the grounds for application of the provisions of that paragraph are subsequently removed by a reversal of the conviction or termination of the suspension, disbarment, or revocation. An application for reinstatement on any other grounds by any person suspended under paragraph (e)(2) of this rule may be filed at any time and the applicant shall be accorded an opportunity for a hearing in the matter; however, such suspension shall continue unless and until the applicant has been reinstated by order of the Commission for good cause shown.

(6) *Other Proceedings Not Precluded.* A proceeding brought under paragraph (e)(1), (e)(2) or (e)(3) of this rule shall not preclude another proceeding brought under these same paragraphs.

(7) *Public Hearings.* All hearings held under this paragraph (e) shall be public unless otherwise ordered by the Commission on its own motion or after considering the motion of a party.

(f) *Practice Defined.* For the purposes of these Rules of Practice, practicing before the Commission shall include, but shall not be limited to:

(1) transacting any business with the Commission; and

(2) the preparation of any statement, opinion or other paper by any attorney, accountant, engineer or other professional or expert, filed with the Commission in any registration statement, notification, application, report or other document with the consent of such attorney, accountant, engineer or other professional or expert.

Revision Comment: Rule 102, which governs appearance and practice before the Commission, contains two changes from former Rule 2. First, as suggested by one commenter, the rule now explicitly requires that individuals and other persons filing a notice of appearance keep the information contained in the notice, such as address and telephone number, up-to-date. Current information is necessary to permit the expeditious service of orders as well as other efforts to contact a party.

The same commenter suggested that the Commission consider adopting a provision that would require an attorney to file a written notice of withdrawal when the attorney seeks to withdraw from a matter before the Commission. New paragraph (d)(4) accomplishes this by requiring that, a person appearing in a representative capacity who wishes to withdraw from a proceeding, must file a motion seeking leave to withdraw and obtain such leave from the Commission or the hearing officer.

In addition, language has been added to paragraph (d) (1) and (2) to clarify the longstanding policy of the Commission that a person who makes a filing with the Commission thereby makes an appearance before the Commission.

Rule 103. Construction of Rules

(a) The Rules of Practice shall be construed and administered to secure the just, speedy, and inexpensive determination of every proceeding.

(b) In any particular proceeding, to the extent that there is a conflict between these rules and a procedural requirement contained in any statute, or any rule or form adopted thereunder, the latter shall control.

(c) For purposes of these rules:

(1) any term in the singular includes the plural, and any term in the plural includes the singular, if such use would be appropriate;

(2) any use of a masculine, feminine, or neuter gender encompasses such other genders as would be appropriate; and

(3) unless the context requires otherwise, counsel for a party may take any action required or permitted to be taken by such party.

Comment (a): Paragraph (a) is based on Rule 1 of the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 1.

Rule 104. Business Hours

The Headquarters office of the Commission, at 450 Fifth Street, NW., Washington, DC 20549, is open each day, except Saturdays, Sundays, and Federal legal holidays, from 9 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect in Washington, DC Federal legal holidays consist of New Year's Day; Birthday of Martin Luther King, Jr.; Presidents Day; Memorial Day; Independence Day; Labor Day; Columbus Day; Veterans Day; Thanksgiving Day; Christmas Day; and any other day appointed as a holiday in Washington, D.C. by the President or the Congress of the United States.

Rule 110. Presiding Officer

All proceedings shall be presided over by the Commission or, if the Commission so orders, by a hearing officer. When the Commission designates that the hearing officer shall be an administrative law judge, the Chief Administrative Law Judge shall select, pursuant to 17 CFR 200.30–10, the administrative law judge to preside.

Comment: Ordinarily the assignment to a hearing officer is part of the order instituting proceedings. The Rules use the term ''hearing officer,'' defined in Rule 101(a), to refer to a person who presides at a hearing. While an administrative law judge presides at most hearings at which the Commission itself does not preside, other persons may preside. *See* Securities Exchange Act § 4A, 15 U.S.C. 78d–1; Administrative Procedure Act § 556(b), 5 U.S.C. 556(b).

Revision Comment: Rule 110 has been revised to specify the process by which administrative law judges are assigned by referencing the authority the Commission has previously delegated to the Chief Administrative Law Judge to assign matters to any of the administrative law judges.

Rule 111. Hearing Officer: Authority

The hearing officer shall have the authority to do all things necessary and appropriate to discharge his or her duties. No provision of these Rules of Practice shall be construed to limit the powers of the hearing officer provided by the Administrative Procedure Act, 5 U.S.C. 556, 557. The powers of the hearing officer include, but are not limited to, the following:

(a) administering oaths and affirmations;

(b) issuing subpoenas authorized by law and revoking, quashing, or modifying any such subpoena;

(c) receiving relevant evidence and ruling upon the admission of evidence and offers of proof;

(d) regulating the course of a proceeding and the conduct of the parties and their counsel;

(e) holding prehearing and other conferences as set forth in Rule 221 and requiring the attendance at any such conference of at least one representative of each party who has authority to negotiate concerning the resolution of issues in controversy;

(f) recusing himself or herself upon motion made by a party or upon his or her own motion;

(g) ordering, in his or her discretion, in a proceeding involving more than one respondent, that the interested division indicate, on the record, at least one day prior to the presentation of any evidence, each respondent against whom that evidence will be offered;

(h) subject to any limitations set forth elsewhere in these rules, considering and ruling upon all procedural and other motions;

(i) preparing an initial decision as provided in Rule 360;

(j) upon notice to all parties, reopening any hearing prior to the filing of an initial decision therein, or, if no initial decision is to be filed, prior to the time fixed for the filing of final briefs with the Commission; and

(k) informing the parties as to the availability of one or more alternative means of dispute resolution, and encouraging the use of such methods.

Comment: This rule is based upon Section 556(c) of the Administrative Procedure Act, 5 U.S.C. 556(c). By its terms, the list of powers is illustrative, not exhaustive. The hearing officer is permitted to take any action necessary and appropriate to discharge his or her duties.

Revision Comment: One commenter suggested that the Commission include in Rule 111 two powers recently added to Section 556(c) of the Administrative Procedure Act by the Administrative Dispute Resolution Act: the power to require attendance at a prehearing conference by a representative of each party who has the authority to negotiate concerning the resolution of issues in controversy and the power to inform parties as to the availability of alternate means of dispute resolution (ADR) and to encourage the use of such methods.

The Commission has decided to modify this rule to address these concerns.

Rule 112. Hearing Officer: Disqualification and Withdrawal

(a) *Notice of Disqualification.* At any time a hearing officer believes himself or herself to be disqualified from considering a matter, the hearing officer shall issue a notice stating that he or she is withdrawing from the matter and setting forth the reasons therefor.

(b) *Motion for Withdrawal.* Any party who has a reasonable, good faith basis to believe that a hearing officer has a personal bias, or is otherwise disqualified from hearing a case, may make a motion to the hearing officer that the hearing officer withdraw. The motion shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification. If the hearing officer finds himself or herself not disqualified, he or she shall so rule and shall continue to preside over the proceeding.

Comment: Section 556(b) of the Administrative Procedure Act, 5 U.S.C. 556(b), provides that a hearing officer may disqualify himself or herself at any time. The standard for making a motion to disqualify requires that the movant have a reasonable good-faith basis. This standard is intended to emphasize that there must be objective reasons to seek a disqualification, not just a subjective, though sincerely held, belief. A party seeking disqualification must do so promptly upon learning of the relevant information. A party may not await the outcome of the hearing officer's decision to determine if the alleged grounds for disqualification affected the decision.

Rule 120. Ex Parte Communications

(a) Except to the extent required for the disposition of *ex parte* matters as authorized by law, the person presiding over an evidentiary hearing may not:

(1) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or

(2) be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for the Commission.

(b) The Commission's code of behavior regarding *ex parte* communications between persons outside the Commission and decisional employees, 17 CFR 200.110–200.114, governs other prohibited communications during a proceeding conducted under the Rules of Practice.

Comment: Paragraph (a) is based on Section 554(d)(1) of the Administrative Procedure Act (APA), 5 U.S.C. 554(d)(1). Paragraph (b) references the Commission's rules applying to communications between Commission members or decisional employees and persons outside the agency, which incorporate the requirements of Section 557(d)(1) of the APA, 5 U.S.C. 557(d)(1). *See also* 17 CFR 200.62 (ethical canon for Commission members regarding *ex parte* communications); Securities Act Release No. 5815 (Mar. 10, 1977), 11 SEC Docket 1933 (Mar. 22, 1977) (amending Commission's code of behavior governing *ex parte* communications between persons outside the Commission and decisional employees to conform to requirements of Section 4 of the Government in the Sunshine Act, 5 U.S.C. § 552b).

Revision Comment: Although the Commission's administrative proceedings were previously subject to the requirements of the Administrative Procedure Act governing *ex parte* communications, 5 U.S.C. 554(d)(1) and 557(d)(1), the prior rules did not mention them. Rule 120 makes no substantive changes to these requirements—it simply restates the APA's directive with regard to *ex parte* contacts. The Rule was added so that these requirements were more readily available to persons subject to proceedings under the Rules of Practice. *See,* Model Adjudication Rule 120(A), Administrative Conference of the United States (Dec. 1993).

Rule 121. Separation of Functions

Any Commission officer, employee or agent engaged in the performance of investigative or prosecutorial functions for the Commission in a proceeding as defined in Rule 101(a) may not, in that proceeding or one that is factually related, participate or advise in the decision, or in Commission review of the decision pursuant to Section 557 of the Administrative Procedure Act, 5 U.S.C. 557, except as a witness or counsel in the proceeding.

Comment: Rule 121 is based on Section 554(d) of the Administrative Procedure Act (APA), 5 U.S.C. 554(d), which governs the separation of personnel involved in prosecutorial and investigative functions in certain cases from decisionmaking in those cases.

Revision Comment: Although the Commission's administrative proceedings were previously subject to the requirements of Section 554(d) of the APA governing separation of functions, 5 U.S.C. 554(d), the prior rules did not mention them. Rule 121 makes no substantive changes to these requirements—it simply restates the APA's position on separation of functions. The Rule was added so that these requirements were more readily available to persons subject to proceedings under the Rules of Practice. *See* Model Adjudication Rule 121, Administrative Conference of the United States (Dec. 1993).

Rule 140. Commission Orders and Decisions: Signature and Availability

(a) *Signature Required.* All orders and decisions of the Commission shall be signed by the Secretary or any other person duly authorized by the Commission.

(b) *Availability for Inspection.* Each order and decision shall be available for inspection by the public from the date of entry, unless the order or decision is nonpublic. A nonpublic order or decision shall be available for inspection by any person entitled to inspect it from the date of entry.

(c) *Date of Entry of Orders.* The date of entry of a Commission order shall be the date the order is signed. Such date shall be reflected in the caption of the order, or if there is no caption, in the order itself.

Revision Comment (b): Changes to the text of the Commission's rule regarding availability of orders are technical. The Office of the Secretary has for many years maintained a practice of holding Commission orders for five days before release to the public. Under Rule 140(b), unless an order or decision is nonpublic, it will be available to the public from the date of entry.

Revision comment (c): This paragraph has been simplified. No substantive change is intended.

Rule 141. Orders and Decisions: Service of Orders Instituting Proceeding and Other Orders and Decisions

(a) *Service of an Order Instituting Proceedings.*

(1) *By Whom Made.* The Secretary, or another duly authorized officer of the Commission, shall serve a copy of an order instituting proceedings on each person named in the order as a party. The Secretary may direct an interested division to assist in making service.

(2) *How made.*

(i) *To Individuals.* Notice of a proceeding shall be made to an individual by delivering a copy of the order instituting proceedings to the individual or to an agent authorized by appointment or by law to receive such notice. *Delivery* means—handing a copy of the order to the individual; or leaving a copy at the individual's office with a clerk or other person in charge thereof; or leaving a copy at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or sending a copy of the order addressed to the individual by U.S. Postal Service certified, registered or Express Mail and obtaining a confirmation of receipt; or giving confirmed telegraphic notice.

(ii) *To Corporations or Entities.* Notice of a proceeding shall be made to a person other than a natural person by delivering a copy of the order instituting proceedings to an officer, managing or general agent, or any other agent authorized by appointment or by law to receive such notice, by any method specified in paragraph (a)(2)(i) of this rule.

(iii) *Upon Persons Registered with the Commission.* In addition to any other method of service specified in paragraph (a)(2) of this rule, notice may be made to a person currently registered with the Commission as a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, investment company or transfer agent by sending a copy of the order addressed to the most recent business address shown on the person's registration form by U.S. Postal Service certified, registered or Express Mail and obtaining a confirmation of attempted delivery.

(iv) *Upon Persons in a Foreign Country.* Notice of a proceeding to a person in a foreign country may be made by any method specified in paragraph (a)(2) of this rule, or by any other method reasonably calculated to give notice, provided that the method of service used is not prohibited by the law of the foreign country.

(v) *In Stop Order Proceedings.* Notwithstanding any other provision of paragraph (a)(2) of this rule, in proceedings pursuant to Sections 8 or 10 of the Securities Act of 1933, 15 U.S.C. 77h or 77j, or Sections 305 or 307 of the Trust Indenture Act of 1939, 15 U.S.C. 77eee or 77ggg, notice of the institution of proceedings shall be made by personal service or confirmed

telegraphic notice, or a waiver obtain pursuant to paragraph (a)(4) of this rule.

(3) *Certificate of Service.* The Secretary shall place in the record of the proceeding a certificate of service identifying the party given notice, the method of service, the date of service, the address to which service was made and the person who made service. If service is made in person, the certificate shall state, if available, the name of the individual to whom the order was given. If service is made by U.S. Postal Service certified, registered or Express Mail, the certificate shall be accompanied by a confirmation of receipt or of attempted delivery, as required. If service is made to an agent authorized by appointment to receive service, the certificate shall be accompanied by evidence of the appointment.

(4) *Waiver of Service.* In lieu of service as set forth in paragraph (a)(2) of this rule, the party may be provided a copy of the order instituting proceedings by first-class mail or other reliable means if a waiver of service is obtained from the party and placed in the record.

(b) *Service of Orders or Decisions Other Than an Order Instituting Proceedings.* Written orders or decisions issued by the Commission or by a hearing officer shall be served promptly on each party pursuant to any method of service authorized under paragraph (a) of this rule or Rule 150(c). Service of orders or decisions by the Commission, including those entered pursuant to delegated authority, shall be made by the Secretary or, as authorized by the Secretary, by a member of an interested division. Service of orders or decisions issued by a hearing officer shall be made by the Secretary or the hearing officer.

Comment (a): The Rule is derived, in part, from Rules 4 and 5(b) of the Federal Rules of Civil Procedure. The Rule is also based, in part, on Section 40(a) of the Investment Company Act, 15 U.S.C. 80a–39(a), and Section 211(c) of the Investment Advisers Act, 15 U.S.C. 80b–11(c), which set forth acceptable methods for service of orders instituting proceedings under those Acts, and on Sections 8 and 10 of the Securities Act of 1933, 15 U.S.C. 77h and 77j, and Sections 305 and 307 of the Trust Indenture Act of 1939, 15 U.S.C. 77eee and 77ggg, which set forth acceptable methods of service for orders instituting stop order proceedings pursuant to those statutory sections.

The Commission commences proceedings to enforce the Federal securities laws by issuing an ''order instituting proceedings.'' The Commission is required to give each party appropriate notice of an order instituting proceedings. *See* Rule 200 (setting forth requirements in connection with the issuance of such orders). While service of the order instituting proceedings satisfies notice requirements, it is not the exclusive means of providing notice sufficient to meet the requirements of due process. In some circumstances—for example, where emergency or expedited relief is sought—actual notice of the institution of a proceeding may be made by telephone. *See, e.g.*, Rule 511. Although formal service of the order is still required in such circumstances, action on an application for emergency or expedited relief may precede service of the order.

Rule 141(a)(2) allows service by those means specifically mentioned by statute. Rule 141 also allows service to be made by U.S. Postal Service Express Mail which, like certified or registered mail, both traditionally relied upon under the former rule, is a U.S. Post Office service that provides each letter a unique identification number, is traceable, and allows for a receipt upon delivery. Under Rule 141, alternative methods of service to persons located in the United States, such as service by publication, are not permitted. A party may, however, waive service and receive notice by accepting a copy of an order instituting proceedings by facsimile transmission, U.S. Mail, private overnight courier, or other means. Whatever method of service is used, Rule 141 requires a certificate of service establishing how notice was given, or a written waiver of service.

The Rule establishes specific criteria for service of orders upon persons registered with the Commission and upon persons in a foreign country. A person who is currently registered with the Commission to engage in the securities business with the public may reasonably be expected to receive mail sent to the address shown on their registration form or to make appropriate arrangements for such mail to be forwarded or delivered. Rule 141 provides that a person currently registered with the Commission as a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, investment company or transfer agent may be served by sending a copy of the order to the last business address shown on their registration form by U.S. Postal Service certified, registered or Express Mail and that confirmation of attempted delivery to that address is sufficient for valid service if no confirmation of receipt can be obtained.

A person in a foreign country may be served by any method of service, reasonably calculated to give notice, that is not prohibited by the law of the foreign country.

Comment (b): Service of an order instituting proceedings places a party on notice that there will be subsequent filings or other papers. Unless a party defaults, a party's response to receipt of an order instituting proceedings must include the filing of a notice of appearance. *Cf.* Rule 155 (governing defaults). The notice will provide an address of record where the party can be served with subsequent orders. Therefore, a return receipt or other confirmation of delivery is not required for subsequent orders.

Subject to statutory limitations governing particular types of orders, orders other than an order instituting proceedings may be served pursuant to any method provided for in Rule 141(a) or in Rule 150(c), which governs service of papers filed by parties. The Commission may serve an order on a party, as well as on the party's counsel. It is the Commission's practice to send orders instituting proceedings and final orders to each party in addition to serving counsel, if any. *Cf.* Rule 150(b) (if a party is represented by counsel, counsel shall be served with papers filed by other parties with the Commission).

Revision Comment (a): The Rule has been revised to permit a waiver of formal service and thereby allow the use of methods of service, such as private courier service or facsimile transmission, in circumstances where such methods might otherwise be inconsistent with statutory requirements.

The Rule has been revised to include a provision specifically addressing service by the Commission on a person in a foreign country. The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents does not apply to the service of Commission orders.

The rule has also been revised to include a specific provision for service on persons registered with the Commission as a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, investment company or transfer agent.

Rule 150. Service of Papers by Parties

(a) *When Required.* In every proceeding as defined in Rule 101(a), each paper, including each notice of appearance, written motion, brief, or other written communication, shall be served upon each party in the

proceeding in accordance with the provisions of this rule; provided, however, that absent an order to the contrary, no service shall be required for motions which may be heard *ex parte.*

(b) *Upon a Person Represented by Counsel.* Whenever service is required to be made upon a person represented by counsel who has filed a notice of appearance pursuant to Rule 102, service shall be made pursuant to paragraph (c) of this rule upon counsel, unless service upon the person represented is ordered by the Commission or the hearing officer.

(c) *How Made.* Service shall be made by delivering a copy of the filing. *Delivery* means:

(1) personal service—handing a copy to the person required to be served; or leaving a copy at the person's office with a clerk or other person in charge thereof; or leaving a copy at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein;

(2) mailing the papers through the U.S. Postal Service by first class, certified, registered, or Express Mail delivery addressed to the person;

(3) sending the papers through a commercial courier service or express delivery service addressed to the person; or

(4) transmitting the papers by facsimile machine where the following conditions are met:

(i) the persons serving each other by facsimile transmission have agreed to do so in a writing, signed by each party, which specifies such terms as they deem necessary with respect to facsimile machine telephone numbers to be used, hours of facsimile machine operation, the provision of non-facsimile original or copy, and any other such matters; and

(ii) receipt of each document served by facsimile is confirmed by a manually signed receipt delivered by facsimile machine or other means agreed to by the parties.

(d) *When Service Is Complete.* Personal service, service by U.S. Postal Service Express Mail or service by a commercial courier or express delivery service is complete upon delivery. Service by mail is complete upon mailing. Service by facsimile is complete upon confirmation of transmission by delivery of a manually signed receipt.

Comment (a): Each document a party files in connection with a proceeding, as defined in Rule 101(a), must be served on all other parties admitted to the proceeding. In general, the party serving a paper should use the same method of service on all other parties and for filing with the Commission. Where a party uses different methods of service, the reason for doing so must be stated. Where a party is represented by counsel who has filed a notice of appearance, service ordinarily shall be made on counsel.

Revision Comment: The rule now contains a provision, paragraph (c)(4), allowing the use of facsimile transmission (''fax'') for the delivery of papers. The Commission received a large number of comments on this subject. Commenters had a number of suggestions for how to implement service by fax, including: that service should not be deemed complete unless a manually signed receipt acknowledges that the transmission was readable and was received in full within the time permitted for filing; that the hearing officer be given discretion to determine whether, and under what circumstances, fax service should be allowed; that an initial agreement to allow service by fax should include an undertaking to serve documents leaving sufficient time before the filing deadline and to notify the sender promptly of any fax transmission errors; that simultaneous service of an original copy should also be made through other means; and that a written agreement of terms should be required when the parties agree to the use of fax service. Commenters disagreed whether the Commission should limit the use of facsimile transmission to cases in which all parties agree on the terms for service.

In federal court, filing by fax is permitted where authorized by local rule subject to standards approved by the Judicial Conference. *See* Fed. R. Civ. P. 5(e); Fed. R. App. P. 25(a). The Commission has decided to allow service by facsimile transmission where two conditions have been met. First, persons serving each other by fax must agree to do so in writing. The written agreement shall contain such terms as are necessary with respect to telephone numbers, hours of operation, and provision of paper original and any other matters. Second, receipt of a document served by fax must be confirmed by a manually signed receipt. These conditions are intended to ensure that service by fax will be both an efficient and an effective means of service.

One commenter objected to the provision in the proposed rule that would have allowed service directly upon a party where the party was represented by counsel. In response, Rule 150(b) has been amended to clarify that service upon counsel by another party is required unless service upon the person represented is specifically ordered by the Commission or the hearing officer.

Rule 151. Filing of Papers With the Commission: Procedure

(a) *When to File.* All papers required to be served by a party upon any person shall be filed with the Commission at the time of service or promptly thereafter. Papers required to be filed with the Commission must be received within the time limit, if any, for such filing.

(b) *Where to File.* Filing of papers with the Commission shall be made by filing them with the Secretary. When a proceeding is assigned to a hearing officer, a person making a filing with the Secretary shall promptly provide to the hearing officer a copy of any such filing; provided, however, that the hearing officer may direct or permit filings to be made with him or her, in which event the hearing officer shall note thereon the filing date and promptly provide the Secretary with either the original or a copy of any such filings.

(c) *To Whom to Direct the Filing.* Unless otherwise provided, where the Commission has assigned a case to a hearing officer, all motions, objections, applications or other filings made during a proceeding prior to the filing of an initial decision therein, or, if no initial decision is to be filed, prior to the time fixed for the filing of briefs with the Commission, shall be directed to and decided by the hearing officer.

(d) *Certificate of Service.* Papers filed with the Commission or a hearing officer shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service and the mailing address or facsimile telephone number to which service was made, if not made in person. If the method of service to any party is different from the method of service to any other party or the method for filing with the Commission, the certificate shall state why a different means of service was used.

Comment: Since hearing officers frequently preside at locations away from the Commission's Headquarters in Washington, D.C., persons are permitted to make filings with the hearing officer, who then can forward the filings to the Secretary. Rule 351 contains additional procedures for the transmittal of the record of a proceeding before a hearing officer (and the index of the record) from the hearing officer to the Secretary.

Rule 151 requires that where the Commission has assigned a hearing officer to preside at a proceeding, the person making a motion direct his or her requests and arguments to the hearing officer, not the Commission. If

a motion is directed to the Commission in a case in which a hearing officer is assigned, the Secretary must refer the motion to the hearing officer unless a motion directly to the Commission is authorized. In those unusual circumstances where a motion is properly directed to the Commission, the proceeding before the hearing officer should continue, unless otherwise ordered.

Revision Comment (d): The requirements for the certificate of service have been modified to require that the certificate list the name of the person served and the method of service used if other than personal service is made. Additionally, if the method of service to any party is different from the method of service to any other party or the method for filing with the Commission, the certificate must state why a different method was used.

Rule 152. Filing of Papers: Form

(a) *Specifications.* Papers filed in connection with any proceeding as defined in Rule 101(a) shall:

(1) be on one grade of unglazed white paper measuring 8½ x 11 inches, except that, to the extent that the reduction of larger documents would render them illegible, such documents may be filed on larger paper;

(2) be typewritten or printed in either 10- or 12-point typeface or otherwise reproduced by a process that produces permanent and plainly legible copies;

(3) include at the head of the paper, or on a title page, the name of the Commission, the title of the proceeding, the names of the parties, the subject of the particular paper or pleading, and the file number assigned to the proceeding;

(4) be paginated with left hand margins at least 1 inch wide, and other margins of at least 1 inch;

(5) be double-spaced, with single-spaced footnotes and single-spaced indented quotations; and

(6) be stapled, clipped or otherwise fastened in the upper left corner.

(b) *Signature Required.* All papers must be dated and signed as provided in Rule 153.

(c) *Suitability for Recordkeeping.* Documents which, in the opinion of the Commission, are not suitable for computer scanning or microfilming may be rejected.

(d) *Number of Copies.* An original and three copies of all papers shall be filed.

(e) *Form of Briefs.* All briefs containing more than 10 pages shall include a table of contents, an alphabetized table of cases, a table of statutes, and a table of other authorities cited, with references to the pages of the brief wherein they are cited.

(f) *Scandalous or Impertinent Matter.* Any scandalous or impertinent matter contained in any brief or pleading or in connection with any oral presentation in a proceeding may be stricken on order of the Commission or the hearing officer.

Rule 153. Filing of Papers: Signature Requirement and Effect

(a) *General Requirements.* Following the issuance of an order instituting proceedings, every filing of a party represented by counsel shall be signed by at least one counsel of record in his or her name and shall state that counsel's business address and telephone number. A party who acts as his or her own counsel shall sign his or her individual name and state his or her address and telephone number on every filing.

(b) *Effect of Signature.*

(1) The signature of a counsel or party shall constitute a certification that:

(i) the person signing the filing has read the filing;

(ii) to the best of his or her knowledge, information, and belief, formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(iii) the filing is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of adjudication.

(2) If a filing is not signed, the hearing officer or the Commission shall strike the filing, unless it is signed promptly after the omission is called to the attention of the person making the filing.

Comment: Rule 153(b) is based upon Rule 11 of the Federal Rules of Civil Procedure. Persons signing a filing bear personal responsibility for the contents of the filing. If a filing is contrary to the provisions of this rule, the person or persons signing the filing may be subject to sanctions under Rule 180.

Rule 154. Motions

(a) *Generally.* Unless made during a hearing or conference, a motion shall be in writing, shall state with particularity the grounds therefor, shall set forth the relief or order sought, and shall be accompanied by a written brief of the points and authorities relied upon. All written motions shall be served in accordance with Rule 150, be filed in accordance with Rule 151, meet the requirements of Rule 152, and be signed in accordance with Rule 153. The Commission or the hearing officer may order that an oral motion be submitted in writing. Unless otherwise ordered by the Commission or the hearing officer, if a motion is properly made to the Commission concerning a proceeding to which a hearing officer is assigned, the proceeding before the hearing officer shall continue pending the determination of the motion by the Commission. No oral argument shall be heard on any motion unless the Commission or the hearing officer otherwise directs.

(b) *Opposing and Reply Briefs.* Except as provided in Rule 401, briefs in opposition to a motion shall be filed within five days after service of the motion. Reply briefs shall be filed within three days after service of the opposition.

(c) *Length Limitation.* A brief in support of or opposition to a motion shall not exceed 10 pages, exclusive of pages containing any table of contents, table of authorities, and/or addendum. Requests for leave to file briefs in excess of 10 pages are disfavored.

Rule 155. Default; Motion to Set Aside Default

(a) A party to a proceeding may be deemed to be in default and the Commission or the hearing officer may determine the proceeding against that party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true, if that party fails:

(1) to appear, in person or through a representative, at a hearing or conference of which that party has been notified;

(2) to answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding; or

(3) to cure a deficient filing within the time specified by the Commission or the hearing officer pursuant to Rule 180(b).

(b) A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. In order to prevent injustice and on such conditions as may be appropriate, the hearing officer, at any time prior to the filing of the initial decision, or the Commission, at any time, may for good cause shown set aside a default.

Comment: Pursuant to Rule 155 the Commission or the hearing officer may enter a default against any party who fails to appear in person or, if appropriate, through a representative, at a hearing or conference of which the party has notice. Thus, for example, failure to appear at a prehearing conference may be a grounds for default.

In addition, for example, this rule permits the entry of default against any party who fails to answer, to respond to a dispositive motion, or otherwise to defend the proceeding, or to file a required brief either before the hearing officer or on appeal before the Commission. This provision retains the existing standards for setting aside a default contained in former Rule of Practice 12(d), 17 CFR 201.12(d) (1994).

Revision Comment: Failure to file a notice of appearance has been eliminated as a basis for a default. Failure to file a notice of appearance, like the failure to make any other required filing, is subject to sanctions under Rule 180(c).

Rule 160. Time Computation

(a) *Computation.* In computing any period of time prescribed in or allowed by these Rules of Practice or by order of the Commission, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or Federal legal holiday (as defined in Rule 104), in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal legal holiday. Intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computation when the period of time prescribed or allowed is seven days or less, not including any additional time allowed for service by mail in paragraph (b) of this rule. If on the day a filing is to be made, weather or other conditions have caused the Secretary's office or other designated filing location to close, the filing deadline shall be extended to the end of the next day that is neither a Saturday, a Sunday, nor a Federal legal holiday.

(b) *Additional Time For Service by Mail.* If service is made by mail, three days shall be added to the prescribed period for response.

Revision Comment (b): This paragraph has been simplified. No substantive change is intended. One commenter requested that the amount of time for service by mail be increased. Rule 6(e) of the Federal Rules of Civil Procedure, which allows only three days to be added to a prescribed period when service is by mail, establishes a widely used and familiar standard for the computation of additional time when service is by mail. No change in the additional time period for service by mail was deemed warranted.

Rule 161. Extensions of Time, Postponements and Adjournments

(a) *Availability.* Except as otherwise provided by law, the Commission, at any time, or the hearing officer, at any time prior to the filing of his or her initial decision or, if no initial decision is to be filed, at any time prior to the closing of the record, may, for good cause shown, extend or shorten any time limits prescribed by these Rules of Practice for the filing of any papers and may, consistent with paragraph (b) of this rule, postpone or adjourn any hearing.

(b) *Limitations on Postponements, Adjournments and Extensions.* A hearing shall begin at the time and place ordered, provided that, within the limits provided by statute, the Commission or the hearing officer may for good cause shown postpone the commencement of the hearing or adjourn a convened hearing for a reasonable period of time or change the place of hearing.

(1) *Additional Considerations.* In considering a motion for postponement of the start of a hearing, adjournment once a hearing has begun, or extensions of time for filing papers, the hearing officer or the Commission shall consider, in addition to any other factors:

(i) the length of the proceeding to date;

(ii) the number of postponements, adjournments or extensions already granted;

(iii) the stage of the proceedings at the time of the request; and

(iv) any other such matters as justice may require.

(2) *Time Limit.* Postponements, adjournments or extensions of time for filing papers shall not exceed 21 days unless the Commission or the hearing officer states on the record or sets forth in a written order the reasons why a longer period of time is necessary.

Comment: The rule requires the hearing officer to consider explicitly the efficient and timely administration of justice when determining whether to grant a postponement, adjournment or extension of time for filing of papers. The need for delay must be balanced against the need to bring each case to a timely conclusion, consistent with the public interest. The factors listed in the rule build on existing standards applied by the administrative law judges.

Rule 180. Sanctions

(a) *Contemptuous Conduct.*

(1) *Subject to Exclusion or Suspension.* Contemptuous conduct by any person before the Commission or a hearing officer during any proceeding, including any conference, shall be grounds for the Commission or the hearing officer to:

(i) exclude that person from such hearing or conference, or any portion thereof; and/or

(ii) summarily suspend that person from representing others in the proceeding in which such conduct occurred for the duration, or any portion, of the proceeding.

(2) *Review Procedure.* A person excluded from a hearing or conference, or a counsel summarily suspended from practice for the duration or any portion of a proceeding, may seek review of the exclusion or suspension by filing with the Commission, within three days of the exclusion or suspension order, a motion to vacate the order. The Commission shall consider such motion on an expedited basis as provided in Rule 500.

(3) *Adjournment.* Upon motion by a party represented by counsel subject to an order of exclusion or suspension, an adjournment shall be granted to allow the retention of new counsel. In determining the length of an adjournment, the Commission or hearing officer shall consider, in addition to the factors set forth in Rule 161, the availability of co-counsel for the party or of other members of a suspended counsel's firm.

(b) *Deficient Filings; Leave to Cure Deficiencies.* The Commission or the hearing officer may reject, in whole or in part, any filing that fails to comply with any requirements of these Rules of Practice or of any order issued in the proceeding in which the filing was made. Any such filings shall not be part of the record. The Commission or the hearing officer may direct a party to cure any deficiencies and to resubmit the filing within a fixed time period.

(c) *Failure to Make Required Filing or to Cure Deficient Filing.* The Commission or the hearing officer may enter a default pursuant to Rule 155, dismiss the case, decide the particular matter at issue against that person, or prohibit the introduction of evidence or exclude testimony concerning that matter if a person fails:

(1) to make a filing required under these Rules of Practice; or

(2) to cure a deficient filing within the time specified by the Commission or the hearing officer pursuant to paragraph (b) of this rule.

Comment (a): Paragraph (a) is based on former Rule 2(f), which provided that contemptuous conduct was grounds for exclusion and summary suspension for the duration of a hearing. Contemptuous conduct during the course of a proceeding that would warrant

sanctions has been rare. Under Rule 180(a), any person found to have engaged in contemptuous conduct can be excluded from all or a portion of a particular hearing or conference.

In the event that a hearing officer or the Commission excludes or suspends a party's counsel, the party may make a motion for an adjournment to obtain new counsel. *See* 5 U.S.C. 555(b) (right in administrative proceedings to be accompanied by retained counsel); *cf. Feeney* v. *SEC*, 564 F.2d 260, 262 (8th Cir. 1977), *cert. denied*, 435 U.S. 969 (1978) (no right to appointed counsel in administrative proceedings where respondent assumed to be indigent (citing *Boruski* v. *SEC*, 340 F.2d 991, 992 (2d Cir.), *cert. denied*, 381 U.S. 943 (1965)). Whether or not an exclusion or summary suspension order is issued, conduct during a hearing may be the basis for further disciplinary action, *e.g.*, pursuant to Rule 102(e), or, as to a staff member, under the Commission's personnel regulations.

Comment (b): A filing may be rejected if it fails to meet the requirements of any rule or order. *See In the Matter of Fischbach*, Admin. Proc. File No. 3–7384 (June 18, 1991). For example, filings that are not served as required by Rule 150, that fail to cite to the record as required by Rule 450, that are longer than permitted by Rule 450, or that fail to comply with a prehearing order pursuant to Rule 221, could be found to be deficient.

The rule permits the hearing officer or the Commission to fix a period of time during which a deficiency must be cured and a new filing made. The authority to reject a filing or to permit an opportunity to cure a deficiency is discretionary. Whether a particular filing should be rejected or whether leave to cure a deficient filing should be granted requires a case-by-case determination. Parties, including those appearing *pro se*, are obligated to familiarize themselves with the Rules of Practice. The fact that a person may represent himself or herself or be represented by counsel who has not previously practiced before the Commission may be a factor in considering how to address a deficient filing, but should not, standing alone, be determinative. Deficiencies that are technical, *de minimis*, or non-prejudicial, however, may not warrant any action pursuant to this rule.

Comment (c): This provision permits the entry of sanctions for the failure to file a document required under the Commission's Rules of Practice or for failure to cure a deficient filing within the time ordered. In response to such failures, the Commission or the hearing officer may determine the particular matter at issue against the person who has failed to perform or may preclude that person from introducing evidence or testimony on that matter. It is intended that the provision will be invoked for failures that do not warrant the entry of a default under Rule 155.

Revision Comment (b): The rule now states explicitly that a rejected filing is not part of the record. If a filing is rejected, the entry of that filing on the docket may be stricken.

Revision Comment (c): The revised rule allows for a sanction less severe than a default for a deficient filing.

Rule 190. Confidential Treatment of Information in Certain Filings

(a) *Application.* An application for confidential treatment pursuant to the provisions of Clause 30 of Schedule A of the Securities Act of 1933, 15 U.S.C. 77aa(30), and Rule 406 thereunder, 17 CFR 230.406; Section 24(b)(2) of the Securities Exchange Act of 1934, 15 U.S.C. 78x(b)(2), and Rule 24b–2 thereunder, 17 CFR 240.24b–2; Section 22(b) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79v(b), and Rule 104 thereunder, 17 CFR 250.104; Section 45(a) of the Investment Company Act of 1940, 15 U.S.C. 80a–44(a), and Rule 45a–1 thereunder, 17 CFR 270.45a–1; or Section 210(a) of the Investment Advisers Act of 1940, 15 U.S.C. 80b–10(a), shall be filed with the Secretary. The application shall be accompanied by a sealed copy of the materials as to which confidential treatment is sought.

(b) *Procedure For Supplying Additional Information.* The applicant may be required to furnish in writing additional information with respect to the grounds for objection to public disclosure. Failure to supply the information so requested within 14 days from the date of receipt by the applicant of a notice of the information required shall be deemed a waiver of the objection to public disclosure of that portion of the information to which the additional information relates, unless the Commission or the hearing officer shall otherwise order for good cause shown at or before the expiration of such 14-day period.

(c) *Confidentiality of Materials Pending Final Decision.* Pending the determination of the application for confidential treatment, transcripts, non-final orders including an initial decision, if any, and other materials in connection with the application shall be placed under seal; shall be for the confidential use only of the hearing officer, the Commission, the applicant, and any other parties and counsel; and shall be made available to the public only in accordance with orders of the Commission.

(d) *Public Availability of Orders.* Any final order of the Commission denying or sustaining an application for confidential treatment shall be made public. Any prior findings or opinions relating to an application for confidential treatment under this rule shall be made public at such time as the material as to which confidentiality was requested is made public.

Comment: Pursuant to the statutory provisions and rules set forth in paragraph (a), persons who file a registration statement, report, application or other such materials may file an application for confidential treatment of required information included in such filings. Securities Act Rule 406, 17 CFR 230.406, Exchange Act Rule 24b-2, 17 CFR 240.24b-2, and Pubic Utility Holding Company Act Rule 104, 15 CFR 250.104, set forth certain procedures governing application for confidential treatment for materials filed under the Securities Act, Exchange Act and Public Utility Holding Company Act respectively. There are no corresponding rules governing applications for confidential treatment under the Investment Company Act or Investment Advisers Act, although Investment Company Act Rule 45a-1, 17 CFR 270.45a-1, sets forth certain procedures governing applications for confidential treatment of the names and addresses of dealers of registered investment companies.

Rule 190 is based in part on former Rule 25. The Rule governs applications for confidential treatment with respect to information required to be filed with the Commission in connection with a registration statement, report, application or other such materials. Rule 322 applies to requests for a protective order for materials introduced at hearings conducted pursuant to these Rules of Practice. Thus, both rules address material that would ordinarily be placed in a public file but is treated as confidential pending the determination of the request for confidentiality. The Commission's Freedom of Information Act regulations, 17 CFR 200.83, apply to requests for confidential treatment of information, such as testimony in an enforcement investigation, that is not ordinarily placed in a public file at the time received by the Commission but which may be made public pursuant to a request under the Freedom of Information Act (''FOIA''). Requests to keep materials confidential under FOIA are not evaluated until the Commission

receives a request for access to the information.

An application for confidential treatment may be heard by the Commission or referred to a hearing officer. Authority to act on applications for confidential treatment has been delegated to the staff, *see, e.g.*, Delegation to the Director of the Division of Corporation Finance, 17 CFR 200.30–1(a)(3). In practice, applications are determined by delegated authority. Review of delegated decisionmaking may be sought pursuant to Rule 430.

Rule 191. Adjudications Not Required To Be Determined on the Record After Notice and Opportunity for Hearing

(a) *Scope of the Rule.* This rule applies to every case of adjudication, as defined in 5 U.S.C. 551, pursuant to any statute which the Commission administers, where adjudication is not required to be determined on the record after notice and opportunity for hearing and which the Commission has not chosen to determine on the record after notice and opportunity for hearing.

(b) *Procedure.* In every case of adjudication under paragraph (a) of this rule, the Commission shall (1) give prompt notice of any adverse action or final disposition to any person who has requested the Commission to make (or not to make) any such adjudication, and (2) furnish to any such person a written statement of reasons therefor. Additional procedures may be specified in rules relating to specific types of such adjudications. Where any such rule provides for the publication of a Commission order, notice of the action or disposition shall be deemed to be given by such publication.

(c) *Contents of the Record.* If the Commission provides notice and opportunity for the submission of written comments by parties to the adjudication or, as the case may be, by other interested persons, written comments received on or before the closing date for comments, unless accorded confidential treatment pursuant to statute or rule of the Commission, become a part of the record of the adjudication. The Commission, in its discretion, may accept and include in the record written comments filed with the Commission after the closing date.

Comment: Section 23(c) of the Exchange Act, 15 U.S.C. 78w(c) requires the Commission to prescribe the procedures applicable to Exchange Act adjudications ''not required to be determined on the record after notice and opportunity for hearing.'' Rule 191 contains these required procedures and also applies them to adjudications arising under all statutes administered by the Commission.

The Administrative Procedure Act recognizes a distinction between an ''adjudication required by statute to be determined on the record after opportunity for an agency hearing,'' *See* 5 U.S.C. 554(a), and other types of adjudications. The former are often referred to as ''formal'' or ''on the record'' adjudications. The latter, such as proceedings in which a hearing is required to be conducted after ''notice and opportunity for hearing,'' but not specifically ''on the record,'' are often referred to as ''informal'' adjudications. Various Administrative Procedure Act requirements, particularly with respect to hearing procedures, apply only to an ''adjudication required by statute to be determined on the record after opportunity for an agency hearing * * *'' *See, e.g.*, 5 U.S.C. 556(a), 557(a) (requirements of those sections apply only to an adjudication ''on the record'' as set forth in Section 554(a)); *cf.* 5 U.S.C. 555 (requirements not limited to proceedings ''on the record'' as set forth in Section 554(a)).

Where an ''on the record'' hearing is not mandated by statute, this rule establishes certain basic requirements for the proceedings. The Commission, as a matter of discretion, can order a ''formal'' hearing or provide other alternative procedures in addition to the minimum requirements of Rule 191.

Rule 192. Rulemaking: Issuance, Amendment and Repeal of Rules of General Application

(a) *By Petition.* Any person desiring the issuance, amendment or repeal of a rule of general application may file a petition therefor with the Secretary. Such petition shall include a statement setting forth the text or the substance of any proposed rule or amendment desired or specifying the rule the repeal of which is desired, and stating the nature of his or her interest and his or her reasons for seeking the issuance, amendment or repeal of the rule. The Secretary shall acknowledge, in writing, receipt of the petition and refer it to the appropriate division or office for consideration and recommendation. Such recommendations shall be transmitted with the petition to the Commission for such action as the Commission deems appropriate. The Secretary shall notify the petitioner of the action taken by the Commission.

(b) *Notice of Proposed Issuance, Amendment or Repeal of Rules.* Except where the Commission finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, whenever the Commission proposes to issue, amend, or repeal any rule or regulation of general application other than an interpretive rule; general statement of policy; or rule of agency organization, procedure, or practice; or any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts, there shall first be published in the **Federal Register** a notice of the proposed action. Such notice shall include:

(1) a statement of the time, place, and nature of the rulemaking proceeding, with particular reference to the manner in which interested persons shall be afforded the opportunity to participate in such proceeding;

(2) reference to the authority under which the rule is proposed; and

(3) the terms or substance of the proposed rule or a description of the subjects and issues involved.

Rule 193. Applications by Barred Individuals for Consent to Associate

Preliminary Note

This rule governs applications to the Commission by certain persons, barred by Commission order from association with brokers, dealers, municipal securities dealers, government securities brokers, government securities dealers, investment advisers, investment companies or transfer agents, for consent to become so associated. Applications made pursuant to this rule must show that the proposed association would be consistent with the public interest. In addition to the information specifically required by the rule, applications should be supplemented, where appropriate, by written statements of individuals (other than the applicant) who are competent to attest to the applicant's character, employment performance, and other relevant information. Intentional misstatements or omissions of fact may constitute criminal violations of 18 U.S.C. 1001 *et seq.* and other provisions of law.

The nature of the supervision that an applicant will receive or exercise as an associated person with a registered entity is an important matter bearing upon the public interest. In meeting the burden of showing that the proposed association is consistent with the public interest, the application and supporting documentation must demonstrate that the proposed supervision, procedures, or terms and conditions of employment are reasonably designed to prevent a recurrence of the conduct that led to imposition of the bar. As an associated person, the applicant will be limited to association in a specified capacity with

a particular registered entity and may also be subject to specific terms and conditions.

Normally, the applicant's burden of demonstrating that the proposed association is consistent with the public interest will be difficult to meet where the applicant is to be supervised by, or is to supervise, another barred individual. In addition, where an applicant wishes to become the sole proprietor of a registered entity and thus is seeking Commission consent notwithstanding an absence of supervision, the applicant's burden will be difficult to meet.

In addition to the factors set forth in paragraph (d) of this rule, the Commission will consider the nature of the findings that resulted in the bar when making its determination as to whether the proposed association is consistent with the public interest. In this regard, attention is directed to Rule 5(e) of the Commission's Rules on Informal and Other Procedures, 17 CFR 202.5(e). Among other things, Rule 5(e) sets forth the Commission's policy ''not to permit a * * * respondent [in an administrative proceeding] to consent to * * * [an] order that imposes a sanction while denying the allegations in the * * * order for proceedings.'' Consistent with the rationale underlying that policy, and in order to avoid the appearance that an application made pursuant to this rule was granted on the basis of such denial, the Commission will not consider any application that attempts to reargue or collaterally attack the findings that resulted in the Commission's bar order.

(a) *Scope of Rule.* Applications for Commission consent to associate, or to change the terms and conditions of association, with a registered broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, investment company or transfer agent may be made pursuant to this rule where a Commission order bars the individual from association with a registered entity and:

(1) such barred individual seeks to become associated with an entity that is not a member of a self-regulatory organization; or

(2) the order contains a proviso that application may be made to the Commission after a specified period of time.

(b) *Form of Application.* Each application shall be supported by an affidavit, manually signed by the applicant, that addresses the factors set forth in paragraph (d) of this rule. One original and three copies of the application shall be filed pursuant to Rules 151, 152 and 153. Each application shall include as exhibits:

(1) a copy of the Commission order imposing the bar;

(2) an undertaking by the applicant to notify immediately the Commission in writing if any information submitted in support of the application becomes materially false or misleading while the application is pending;

(3) the following forms, as appropriate:

(i) a copy of a completed Form U–4, where the applicant's proposed association is with a broker-dealer or municipal securities dealer;

(ii) a copy of a completed Form MSD–4, where the applicant's proposed association is with a bank municipal securities dealer;

(iii) the information required by Form ADV, 17 CFR 279.1, with respect to the applicant, where the applicant's proposed association is with an investment adviser;

(iv) the information required by Form TA–1, 17 CFR 249b.100, with respect to the applicant, where the applicant's proposed association is with a transfer agent; and

(4) a written statement by the proposed employer that describes:

(i) the terms and conditions of employment and supervision to be exercised over such applicant and, where applicable, by such applicant;

(ii) the qualifications, experience, and disciplinary records of the proposed supervisor(s) of the applicant;

(iii) the compliance and disciplinary history, during the two years preceding the filing of the application, of the office in which the applicant will be employed; and

(iv) the names of any other associated persons in the same office who have previously been barred by the Commission, and whether they are to be supervised by the applicant.

(c) *Required Showing.* The applicant shall make a showing satisfactory to the Commission that the proposed association would be consistent with the public interest.

(d) *Factors to be Addressed.* The affidavit required by paragraph (b) of this rule shall address each of the following:

(1) the time period since the imposition of the bar;

(2) any restitution or similar action taken by the applicant to recompense any person injured by the misconduct that resulted in the bar;

(3) the applicant's compliance with the order imposing the bar;

(4) the applicant's employment during the period subsequent to imposition of the bar;

(5) the capacity or position in which the applicant proposes to be associated;

(6) the manner and extent of supervision to be exercised over such applicant and, where applicable, by such applicant;

(7) any relevant courses, seminars, examinations or other actions completed by the applicant subsequent to imposition of the bar to prepare for his or her return to the securities business; and

(8) any other information material to the application.

(e) *Notification to Applicant and Written Statement.* In the event an adverse recommendation is proposed by the staff with respect to an application made pursuant to this rule, the applicant shall be so advised and provided with a written statement of the reasons for such recommendation. The applicant shall then have 30 days to submit a written statement in response.

(f) *Concurrent Applications.* The Commission will not consider any application submitted pursuant to this rule if any other application for consent to associate concerning the same applicant is pending before any self-regulatory organization.

Initiation of Proceedings and Prehearing Rules

Rule 200. Initiation of Proceedings.

(a) *Order Instituting Proceedings: Notice and Opportunity For Hearing.*

(1) *Generally.* Whenever an order instituting proceedings is issued by the Commission, appropriate notice thereof shall be given to each party to the proceeding by the Secretary or another duly designated officer of the Commission. Each party shall be given notice of any hearing within a time reasonable in light of the circumstances, in advance of the hearing; provided, however, no prior notice need be given to a respondent if the Commission has authorized the Division of Enforcement to seek a temporary sanction *ex parte.*

(2) *Stop Order Proceedings: Additional Persons Entitled to Notice.* Any notice of a proceeding relating to the issuance of a stop order suspending the effectiveness of a registration statement pursuant to Section 8(d) of the Securities Act of 1933, 15 U.S.C. 77h(d), shall be sent to or served on the issuer; or, in the case of a foreign government or political subdivision thereof, sent to or served on the underwriter; or, in the case of a foreign or territorial person, sent to or served on its duly authorized representative in the United States named in the registration statement, properly directed in the case of telegraphic notice to the address

given in such statement. In addition, if such proceeding is commenced within 90 days after the registration statement has become effective, notice of the proceeding shall be given to the agent for service named on the facing sheet of the registration statement and to each other person designated on the facing sheet of the registration statement as a person to whom copies of communications to such agent are to be sent.

(b) *Content of Order.* The order instituting proceedings shall:

(1) state the nature of any hearing;

(2) state the legal authority and jurisdiction under which the hearing is to be held;

(3) contain a short and plain statement of the matters of fact and law to be considered and determined, unless the order directs an answer pursuant to Rule 220 in which case the order shall set forth the factual and legal basis alleged therefor in such detail as will permit a specific response thereto; and

(4) state the nature of any relief or action sought or taken.

(c) *Time and Place of Hearing.* The time and place for any hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties, other participants, or their representatives.

(d) *Amendment to Order Instituting Proceedings.*

(1) *By the Commission.* Upon motion by a party, the Commission may, at any time, amend an order instituting proceedings to include new matters of fact or law.

(2) *By the Hearing Officer.* Upon motion by a party, the hearing officer may, at any time prior to the filing of an initial decision or, if no initial decision is to be filed, prior to the time fixed for the filing of final briefs with the Commission, amend an order instituting proceedings to include new matters of fact or law that are within the scope of the original order instituting proceedings.

(e) *Publication of Notice of Public Hearings.* Unless otherwise ordered by the Commission, notice of any public hearing shall be given general circulation by release to the public, by publication in the *SEC News Digest* and, where directed, by publication in the **Federal Register**.

Comment (a): Paragraph (a) requires that appropriate notice of an order instituting proceedings be given. Ordinarily, notice is accomplished through service of the order pursuant to the procedures set forth in Rule 141. Where emergency or expedited action is sought, however, notice of a hearing may be given prior to formal service of the order instituting proceedings. *See* Rules 511(a) and 521(a). Notice may be delayed if the Commission determines to hear a matter *ex parte. See* Rule 513.

Comment (c): The provisions of this paragraph are based on Section 554(b) of the Administrative Procedure Act, 5 U.S.C. § 554(b). It is the policy of the Commission that in a proceeding under the Public Utility Holding Company Act, the Investment Company Act (except Section 9(b)), Section 206A of the Investment Advisers Act, Section 8 of the Securities Act, or Sections 305 and 307 of the Trust Indenture Act or any proceeding in which a temporary sanction is sought, the hearing should normally be held at the Commission's Headquarters.

Comment (d): The Commission has stated that amendment of orders instituting proceeding should be freely granted, subject only to the consideration that other parties should not be surprised, nor their rights prejudiced. *Carl L. Shipley*, 45 S.E.C. 589, 595 (1974). Where amendments to an order instituting proceedings are intended to correct an error, to conform the order to the evidence or to take into account subsequent developments which should be considered in disposing of the proceeding, and the amendments are within the scope of the original order, either a hearing officer or the Commission has authority to amend the order. *See, e.g., Don A. Long*, Admin. Proc. Rulings Release No. 233 (Mar. 31, 1980), 52 SEC Docket 497 (Aug. 18, 1992) (hearing officer's grant of motion to conform pleading to evidence adduced at hearing). Since, however, the Commission has not delegated its authority to authorize orders instituting proceedings, hearing officers do not have authority to initiate new charges or to expand the scope of matters set down for hearing beyond the framework of the original order instituting proceedings. *See* Securities Act Release No. 5309 (Sept. 27, 1972).

Revision Comment (c): Comment was requested as to the Commission's practice with respect to holding hearings in multiple cities, in locations outside Washington, or in locations other than those where the Commission maintains Regional Offices. Commenters supported the current practice. The Commission has determined not to change the substance of the rule. The statement of policy in former Rule 6(b) that certain specified hearings would normally be held in Washington, D.C. has been moved into a comment to Rule 200. The policy statement contained in the comment has been modified to reflect that the hearing location should normally be at the Commission's Headquarters, and that hearings as to whether a temporary sanction will be imposed are covered by the policy.

Rule 201. Consolidation of Proceedings

By order of the Commission or a hearing officer, proceedings involving a common question of law or fact may be consolidated for hearing of any or all the matters at issue in such proceedings. The Commission or the hearing officer may make such orders concerning the conduct of such proceedings as it deems appropriate to avoid unnecessary cost or delay. Consolidation shall not prejudice any rights under these Rules of Practice and shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred. For purposes of this rule, no distinction is made between joinder and consolidation of proceedings.

Comment: Rule 201 is modeled after Model Adjudication Rule 201, Administrative Conference of the United States (Dec. 1993).

Revision Comment: Former Rule 10 provided that proceedings could be ''joined'' and ''consolidated.'' Rule 201 does not draw a distinction between joinder and consolidation.

One commenter suggested that the Commission should refrain from making decisions on whether to consolidate proceedings in order to avoid the appearance that in deciding the consolidation issue the Commission had reached an opinion as to the merits of a case. Just as judges make preliminary decisions regarding joinder, consolidation, evidentiary motions and other matters without losing either their objectivity or the appearance of objectivity, so the Commission or a hearing officer must decide matters preliminary to a final decision. There is neither a loss of objectivity nor an appearance of less objectivity from doing so. Although the Commission does not agree with the rationale provided by the commenter, the rule as adopted permits the decision on consolidation to be made by a hearing officer because it may be more efficient to have a hearing officer issue a decision on consolidation.

The commenter also suggested that consolidation should be permitted only if consolidation tends to avoid unnecessary cost or delay as under former Rule 10. Rule 201 as revised includes a standard substantially similar to that of former Rule 10.

Rule 202. Specification of Procedures by Parties in Certain Proceedings

(a) *Motion to Specify Procedures.* In any proceeding other than an enforcement or disciplinary proceeding

or a proceeding to review a determination by a self-regulatory organization pursuant to Rules 420 and 421, a party may, at any time up to 20 days prior to the start of a hearing, make a motion to specify the procedures necessary or appropriate for the proceeding, with particular reference to:

(1) whether there should be an initial decision by a hearing officer;

(2) whether any interested division of the Commission may assist in the preparation of the Commission's decision; and

(3) whether there should be a 30-day waiting period between the issuance of the Commission's order and the date it is to become effective.

(b) *Objections; Effect of Failure to Object.* Any other party may object to the procedures so specified, and such party may specify such additional procedures as it considers necessary or appropriate. In the absence of such objection or such specification of additional procedures, such other party may be deemed to have waived objection to the specified procedures.

(c) *Approval Required.* Any proposal pursuant to paragraph (a) of this rule, even if not objected to by any party, shall be subject to the written approval of the hearing officer.

(d) *Procedure Upon Agreement to Waive an Initial Decision.* If an initial decision is waived pursuant to paragraph (a) of this rule, the hearing officer shall notify the Secretary and, unless the Commission directs otherwise within 14 days, no initial decision shall be issued.

Comment: Allowing for the specification of procedures by the parties under the supervision of a hearing officer has been effective in promoting efficiency in certain proceedings involving regulatory matters. By contrast, in an enforcement or disciplinary proceeding in which the government is seeking to impose sanctions on particular persons, or on review of a determination by a self-regulatory organization, it is not in the public interest to subject basic procedures to negotiation by the parties. Accordingly, Rule 202 excludes enforcement, disciplinary, and self-regulatory organization review proceedings from its scope.

Consistent with the operation of Rule 221, the Rule requires motions to specify procedures to be made at least 20 days prior to a hearing. As a result, any such motions may be timely answered and resolved prior to the final prehearing conference.

Rule 210. Parties, Limited Participants and Amici Curiae

(a) *Parties in an Enforcement or Disciplinary Proceeding or a Proceeding to Review a Self-Regulatory Organization Determination.*

(1) *Generally.* No person shall be granted leave to become a party or a non-party participant on a limited basis in an enforcement or disciplinary proceeding or a proceeding to review a determination by a self-regulatory organization pursuant to Rules 420 and 421.

(2) *Disgorgement Proceedings.* In an enforcement proceeding, a person may state his or her views with respect to a proposed plan of disgorgement or file a proof of claim pursuant to Rule 612.

(b) *Intervention as a Party.*

(1) *Generally.* In any proceeding, other than an enforcement proceeding, a disciplinary proceeding or a proceeding to review a self-regulatory organization determination, any person may seek leave to intervene as a party by filing a motion setting forth the person's interest in the proceeding. No person, however, shall be admitted as a party to a proceeding by intervention unless it is determined that leave to participate pursuant to paragraph (c) of this rule would be inadequate for the protection of his or her interests.

(i) In a proceeding under the Public Utility Holding Company Act of 1935, any representative of interested consumers or security holders, or any other person whose participation in the proceeding may be in the public interest or for the protection of investors or consumers, may be admitted as a party upon the filing of a written motion setting forth the person's interest in the proceeding.

(ii) In a proceeding under the Investment Company Act of 1940, any representative of interested security holders, or any other person whose participation in the proceeding may be in the public interest or for the protection of investors, may be admitted as a party upon the filing of a written motion setting forth the person's interest in the proceeding.

(2) *Intervention as of Right.*

(i) In proceedings under the Public Utility Holding Company Act of 1935, any interested representative, agency, authority or instrumentality of the United States or any interested State, State commission, municipality or other political subdivision of a state shall be admitted as a party to any proceeding upon the filing of a written motion requesting leave to be admitted.

(ii) In proceedings under the Investment Company Act of 1940, any interested State or State agency shall be admitted as a party to any proceeding upon the filing of a written motion requesting leave to be admitted.

(c) *Leave to Participate On a Limited Basis.* In any proceeding, other than an enforcement proceeding, a disciplinary proceeding or a proceeding to review a self-regulatory organization determination, any person may seek leave to participate on a limited basis as a non-party participant as to any matter affecting the person's interests.

(1) *Procedure.* Motions for leave to participate shall be in writing, shall set forth the nature and extent of the movant's interest in the proceeding, and, except where good cause for late filing is shown, shall be filed not later than 20 days prior to the date fixed for the commencement of the hearing. Leave to participate pursuant to this paragraph (c) may include such rights of a party as the hearing officer may deem appropriate. Persons granted leave to participate shall be served in accordance with Rule 150; provided, however, that a party to the proceeding may move that the extent of notice of filings or other papers to be provided to persons granted leave to participate be limited, or may move that the persons granted leave to participate bear the cost of being provided copies of any or all filings or other papers. Persons granted leave to participate shall be bound, except as may be otherwise determined by the hearing officer, by any stipulation between the parties to the proceeding with respect to procedure, including submission of evidence, substitution of exhibits, corrections of the record, the time within which briefs or exceptions may be filed or proposed findings and conclusions may be submitted, the filing of initial decisions, the procedure to be followed in the preparation of decisions and the effective date of the Commission's order in the case. Where the filing of briefs or exceptions or the submission of proposed findings and conclusions are waived by the parties to the proceedings, a person granted leave to participate pursuant to this paragraph (c) shall not be permitted to file a brief or exceptions or submit proposed findings and conclusions except by leave of the Commission or of the hearing officer.

(2) *Certain Persons Entitled to Leave to Participate.* The hearing officer is directed to grant leave to participate under this paragraph (c) to any person to whom it is proposed to issue any security in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the Commission is authorized to approve

the terms and conditions of such issuance and exchange after a hearing upon the fairness of such terms and conditions.

(d) *Amicus Participation.*

(1) *Availability.* An amicus brief may be filed only if:

(i) a motion for leave to file the brief has been granted;

(ii) the brief is accompanied by written consent of all parties;

(iii) the brief is filed at the request of the Commission or the hearing officer; or

(iv) the brief is presented by the United States or an officer or agency thereof, or by a State, Territory or Commonwealth.

(2) *Procedure.* An amicus brief may be filed conditionally with the motion for leave. The motion for leave shall identify the interest of the movant and shall state the reasons why a brief of an amicus curiae is desirable. Except as all parties otherwise consent, any amicus curiae shall file its brief within the time allowed the party whose position the amicus will support, unless the Commission or hearing officer, for cause shown, grants leave for a later filing. In the event that a later filing is allowed, the order granting leave to file shall specify when an opposing party may reply to the brief. A motion of an amicus curiae to participate in oral argument will be granted only for extraordinary reasons.

(e) *Permission to State Views.* Any person may make a motion seeking leave to file a memorandum or make an oral statement of his or her views. Any such communication may be included in the record; provided, however, that unless offered and admitted as evidence of the truth of the statements therein made, any assertions of fact submitted pursuant to the provisions of this paragraph (e) will be considered only to the extent that the statements therein made are otherwise supported by the record.

(f) *Modification of Participation Provisions.* The Commission or the hearing officer may, by order, modify the provisions of this rule which would otherwise be applicable, and may impose such terms and conditions on the participation of any person in any proceeding as it may deem necessary or appropriate in the public interest.

Comment (b): Paragraph (b) reflects requirements of Section 19 of the Public Utility Holding Company Act of 1935, 15 U.S.C. § 79s, and Section 40(c) of the Investment Company Act of 1940, 15 U.S.C. § 80a–39(c).

Comment (c): Through leave to participate on a limited basis, this rule provides an interested person the opportunity to express concerns relating to any matter affecting the person's interests. Unlike the consent to submission by an amicus, written consent of all parties is not sufficient to obtain status as a limited participant. Approval from the hearing officer is required.

By their terms, certain rules within the Rules of Practice apply to the rights and responsibilities of ''parties.'' When non-party participants are admitted, the order granting leave to participate may specify the extent to which they are to have the obligations or rights of a party under the Rules. Depending on the extent of the participant's interest and the facts of each case, the degree of participation will vary. *See, e.g., In the Matter of College Retirement Equities Fund,* Admin. Proc. Rulings Release No. 288 (Feb. 11, 1988), 52 SEC Docket 448 (Aug. 18, 1992) (order scheduling prehearing conference to discuss inter alia procedures to limit duplicative cross-examination of witnesses without diminishing the opportunity for full cross-examination by participants).

In an enforcement or disciplinary proceeding, or a proceeding to review a self-regulatory organization determination, the only persons who may be parties are those specified by the Commission in the order instituting proceedings. Status as a limited, non-party participant pursuant to paragraph (c) is not allowed. A person may seek to participate in such proceedings as an amicus, pursuant to paragraph (d), or, if that person has knowledge of specific facts relevant to the proceeding, as a witness. In addition, pursuant to Rule 612, persons desiring to comment on a proposed plan of disgorgement will have an opportunity to submit their written views to the Commission and, as appropriate under the plan, to file a claim against the disgorgement pool.

Paragraph (c)(2) reflects the requirements of Section 3(a)(10) of the Securities Act of 1933, 15 U.S.C. § 77c(a)(10).

Comment (d): The provisions for amicus participation are based on Rule 29 of the Federal Rules of Appellate Procedure. Amicus participation contemplates the limited action of filing a brief setting forth the filer's views on particular legal or policy issues in the proceeding.

Comment (e): This paragraph allows for the submission of a statement of views with less formality than that required for an amicus brief or for participation on an ongoing basis as a non-party. From time to time persons, particularly individual security holders or members of the public, who do not otherwise wish to participate in a proceeding on any extended basis will seek to make written statements of their views in a letter or by appearing at a hearing. The factual assertions in such letters or statements will be considered only to the extent that the statements therein made are otherwise supported by the record.

Revision Comment (d): One commenter suggested that the consent of the Division of Enforcement should not be required for the filing of an amicus brief on behalf of a respondent in an enforcement proceeding. The Commission or a hearing officer can more fairly and more adequately assess the benefits of a proposed amicus filing if the Division of Enforcement or any other party with views on the proposal may set forth its objections on the record. Accordingly, the Commission decided not to make the suggested rule change.

Rule 220. Answer to Allegations

(a) *When Required.* In its order instituting proceedings, the Commission may require any party to file an answer to each of the allegations contained therein. Even if not so ordered, any party in any proceeding may elect to file an answer. Any other person granted leave by the Commission or the hearing officer to participate on a limited basis in such proceedings pursuant to Rule 210(c) may be required to file an answer.

(b) *When to File.* Except where a different period is provided by rule or by order, a party required to file an answer as provided in paragraph (a) of this rule shall do so within 20 days after service upon the party of the order instituting proceedings. Persons granted leave to participate on a limited basis in the proceeding pursuant to Rule 210(c) may file an answer within a reasonable time, as determined by the Commission or the hearing officer. If the order instituting proceedings is amended, the Commission or the hearing officer may require that an amended answer be filed and, if such an answer is required, shall specify a date for the filing thereof.

(c) *Contents; Effect of Failure to Deny.* Unless otherwise directed by the hearing officer or the Commission, an answer shall specifically admit, deny, or state that the party does not have, and is unable to obtain, sufficient information to admit or deny each allegation in the order instituting proceedings. When a party intends in good faith to deny only a part of an allegation, the party shall specify so much of it as is true and shall deny only the remainder. A statement of a lack of information shall have the effect of a denial. A defense of res judicata, statute

of limitations or any other matter constituting an affirmative defense shall be asserted in the answer. Any allegation not denied shall be deemed admitted.

(d) *Motion for More Definite Statement.* A party may file with an answer a motion for a more definite statement of specified matters of fact or law to be considered or determined. Such motion shall state the respects in which, and the reasons why, each such matter of fact or law should be required to be made more definite. If the motion is granted, the order granting such motion shall set the periods for filing such a statement and any answer thereto.

(e) *Amendments.* A party may amend its answer at any time by written consent of each adverse party or with leave of the Commission or the hearing officer. Leave shall be freely granted when justice so requires.

(f) *Failure to File Answer: Default.* If a party respondent fails to file an answer required by this rule within the time provided, such person may be deemed in default pursuant to Rule 155(a). A party may make a motion to set aside a default pursuant to Rule 155(b).

Comment (b): The time allowed to file an answer, 20 days, conforms to the time for answers under Rule 12 of the Federal Rules of Civil Procedure.

Revision Comment (c): The provision relating to the filing of affirmative defenses is based on Rule 8(c) of the Federal Rules of Civil Procedure. The change is intended to improve efficiency and fairness by clarifying issues at an early stage of the proceeding that may affect the timing, duration or necessity for a hearing.

Revision Comment (e): Proposed Rule 9(b) provided for amendment of an answer only when ordered by the Commission or a hearing officer. As adopted, Rule 220(e) allows amendment of an answer by consent of all parties or by leave of the Commission or hearing officer. Amendment of an answer may increase efficiency and fairness by sharpening the issues in dispute. Moreover, the provisions for a summary disposition prior to hearing pursuant to Rule 250 increase the importance of the answer. The modification to the rule is in accordance with Rule 15 of the Federal Rules of Civil Procedure. No provision is made, however, for allowing a period for an amendment as of right, because a meaningful period for exercise of such a right, such as the 20-day period provided under the Federal Rules of Civil Procedure, is inconsistent with the prompt start of the hearing. *See, e.g.,* Exchange Act § 21C(b), 15 U.S.C. 78u–3(b) (cease-and-desist proceedings to begin no later than 60 days after institution, other than with consent of respondent).

Rule 221. Prehearing Conferences

(a) *Purposes of Conferences.* The purposes of prehearing conferences include, but are not limited to:

(1) expediting the disposition of the proceeding;

(2) establishing early and continuing control of the proceeding by the hearing officer; and

(3) improving the quality of the hearing through more thorough preparation.

(b) *Procedure.* On his or her own motion or at the request of a party, the hearing officer may, in his or her discretion, direct counsel or any party to meet for an initial, final or other prehearing conference. Such conferences may be held with or without the hearing officer present as the hearing officer deems appropriate. Where such a conference is held outside the presence of the hearing officer, the hearing officer shall be advised promptly by the parties of any agreements reached. Such conferences also may be held with one or more persons participating by telephone or other remote means.

(c) *Subjects to be Discussed.* At a prehearing conference consideration may be given and action taken with respect to any and all of the following:

(1) simplification and clarification of the issues;

(2) exchange of witness and exhibit lists and copies of exhibits;

(3) stipulations, admissions of fact, and stipulations concerning the contents, authenticity, or admissibility into evidence of documents;

(4) matters of which official notice may be taken;

(5) the schedule for exchanging prehearing motions or briefs, if any;

(6) the method of service for papers other than Commission orders;

(7) summary disposition of any or all issues;

(8) settlement of any or all issues;

(9) determination of hearing dates;

(10) amendments to the order instituting proceedings or answers thereto;

(11) production of documents as set forth in Rule 230, and prehearing production of documents in response to subpoenas duces tecum as set forth in Rule 232;

(12) specification of procedures as set forth in Rule 202; and

(13) such other matters as may aid in the orderly and expeditious disposition of the proceeding.

(d) *Required Prehearing Conferences.* Except where the emergency nature of a proceeding would make a prehearing conference clearly inappropriate, both an initial and a final prehearing conference should be held. Unless ordered otherwise, an initial prehearing conference shall be held within 14 days of the service of an answer, or if no answer is required, within 14 days of service of the order instituting proceedings. A final conference shall be held as close to the start of the hearing as reasonable under the circumstances.

(e) *Prehearing Orders.* At or following the conclusion of any conference held pursuant to this rule, the hearing officer shall enter a ruling or order which recites the agreements reached and any procedural determinations made by the hearing officer.

(f) *Failure to Appear: Default.* Any person who is named in an order instituting proceedings as a person against whom findings may be made or sanctions imposed and who fails to appear, in person or through a representative, at a prehearing conference of which he or she has been duly notified may be deemed in default pursuant to Rule 155(a). A party may make a motion to set aside a default pursuant to Rule 155(b).

Comment (a): Rule 221 is modeled on Rule 16 of the Federal Rules of Civil Procedure. When properly managed, prehearing conferences can eliminate unnecessary delay and improve the quality of justice by sharpening the preparation of cases, facilitating the prehearing exchange of documents, and promoting settlements in appropriate cases.

Comment (d): Unless ordered otherwise, the initial prehearing conference will be held within 14 days after a respondent files an answer. Pursuant to Rule 230(d), the Division of Enforcement is required to commence making documents available to a respondent for inspection and copying in an enforcement or disciplinary proceeding no later than 14 days after the respondent files an answer. Consequently, the initial prehearing conference can be used to address any pending issues related to the availability of documents for inspection and copying, and thereafter the respondent should ordinarily have access to such documents.

Revision Comment (c): Paragraph (c)(6) was added to bring to the attention of the participants that they may agree among themselves to procedures for the service of papers by facsimile. *See* Rule 150(c)(4).

Revision Comment (d): Under the proposed rule, no initial prehearing

conference was required. In accordance with comments received, the revised rule requires both an initial and a final prehearing conference, except where the emergency nature of a proceeding would make a prehearing conference clearly inappropriate.

Rule 222. Prehearing Submissions

(a) *Submissions Generally.* The hearing officer, on his or her own motion, or at the request of a party or other participant, may order any party, including the interested division, to furnish such information as deemed appropriate, including any or all of the following:

(1) an outline or narrative summary of its case or defense;

(2) the legal theories upon which it will rely;

(3) copies and a list of documents that it intends to introduce at the hearing; and

(4) a list of witnesses who will testify on its behalf, including the witnesses' names, occupations, addresses and a brief summary of their expected testimony.

(b) *Expert Witnesses.* Each party who intends to call an expert witness shall submit, in addition to the information required by paragraph (a)(4) of this rule, a statement of the expert's qualifications, a listing of other proceedings in which the expert has given expert testimony, and a list of publications authored or co-authored by the expert.

Rule 230. Enforcement and Disciplinary Proceedings: Availability of Documents for Inspection and Copying

For purposes of this rule, the term *documents* shall include writings, drawings, graphs, charts, photographs, recordings and other data compilations, including data stored by computer, from which information can be obtained.

(a) *Documents to be Available for Inspection and Copying.*

(1) Unless otherwise provided by this rule, or by order of the Commission or the hearing officer, the Division of Enforcement shall make available for inspection and copying by any party documents obtained by the Division prior to the institution of proceedings, in connection with the investigation leading to the Division's recommendation to institute proceedings. Such documents shall include:

(i) each subpoena issued;

(ii) every other written request to persons not employed by the Commission to provide documents or to be interviewed;

(iii) the documents turned over in response to any such subpoenas or other written requests;

(iv) all transcripts and transcript exhibits;

(v) any other documents obtained from persons not employed by the Commission; and

(vi) any final examination or inspection reports prepared by the Division of Market Regulation or the Division of Investment Management.

(2) Nothing in this paragraph (a) shall limit the right of the Division to make available any other document, or shall limit the right of a respondent to seek access to or production pursuant to subpoena of any other document, or shall limit the authority of the hearing officer to order the production of any document pursuant to subpoena.

(b) *Documents That May Be Withheld.*

(1) The Division of Enforcement may withhold a document if:

(i) the document is privileged;

(ii) the document is an internal memorandum, note or writing prepared by a Commission employee, other than an examination or inspection report as specified in paragraph (a)(1)(vi) of this rule, or is otherwise attorney work product and will not be offered in evidence;

(iii) the document would disclose the identity of a confidential source; or

(iv) the hearing officer grants leave to withhold a document or category of documents as not relevant to the subject matter of the proceeding or otherwise, for good cause shown.

(2) Nothing in this paragraph (b) authorizes the Division of Enforcement in connection with an enforcement or disciplinary proceeding to withhold, contrary to the doctrine of *Brady v. Maryland,* 373 U.S. 83, 87 (1963), documents that contain material exculpatory evidence.

(c) *Withheld Document List.* The hearing officer may require the Division of Enforcement to submit for review a list of documents withheld pursuant to paragraphs (b)(1)–(b)(4) of this rule or to submit any document withheld, and may determine whether any such document should be made available for inspection and copying.

(d) *Timing of Inspection and Copying.* Unless otherwise ordered by the Commission or the hearing officer, the Division of Enforcement shall commence making documents available to a respondent for inspection and copying pursuant to this rule no later than 14 days after the respondent files an answer. In a proceeding in which a temporary cease-and-desist order is sought pursuant to Rule 510 or a temporary suspension of registration is sought pursuant to Rule 520, documents shall be made available no later than the day after service of the decision as to whether to issue a temporary cease-and-desist order or temporary suspension order.

(e) *Place of Inspection and Copying.* Documents subject to inspection and copying pursuant to this rule shall be made available to the respondent for inspection and copying at the Commission office where they are ordinarily maintained, or at such other place as the parties, in writing, may agree. A respondent shall not be given custody of the documents or leave to remove the documents from the Commission's offices pursuant to the requirements of this rule other than by written agreement of the Division of Enforcement. Such agreement shall specify the documents subject to the agreement, the date they shall be returned and such other terms or conditions as are appropriate to provide for the safekeeping of the documents.

(f) *Copying Costs and Procedures.* The respondent may obtain a photocopy of any documents made available for inspection. The respondent shall be responsible for the cost of photocopying. Unless otherwise ordered, charges for copies made by the Division of Enforcement at the request of the respondent will be at the rate charged pursuant to the fee schedule at 17 CFR 200.80e for copies. The respondent shall be given access to the documents at the Commission's offices or such other place as the parties may agree during normal business hours for copying of documents at the respondent's expense.

(g) *Issuance of Investigatory Subpoenas After Institution of Proceedings.* The Division of Enforcement shall promptly inform the hearing officer and each party if investigatory subpoenas are issued under the same investigation file number or pursuant to the same order directing private investigation (''formal order'') under which the investigation leading to the institution of proceedings was conducted. The hearing officer shall order such steps as necessary and appropriate to assure that the issuance of investigatory subpoenas after the institution of proceedings is not for the purpose of obtaining evidence relevant to the proceedings and that any relevant documents that may be obtained through the use of investigatory subpoenas in a continuing investigation are made available to each respondent for inspection and copying on a timely basis.

(h) *Failure to Make Documents Available—Harmless Error.* In the event

that a document required to be made available to a respondent pursuant to this rule is not made available by the Division of Enforcement, no rehearing or redecision of a proceeding already heard or decided shall be required, unless the respondent shall establish that the failure to make the document available was not a harmless error.

Comment (a): A respondent's right to inspect and copy documents under this rule is automatic; the respondent does not need to make a formal request for access through the hearing officer. Generally, the rule requires that the Division of Enforcement make available for inspection and copying documents obtained by the Division from persons not employed by the Commission during the course of its investigation prior to the institution of proceedings. Except for final inspection or examination reports prepared by the Division of Market Regulation or the Division of Investment Management, documents prepared by Commission staff are treated as attorney work product, and do not have to be made available pursuant to this rule.

Rule 230 is not the exclusive means by which a respondent may obtain access to or production of documents. Production of documents prepared by the staff may be required under the doctrine of *Brady* v. *Maryland*, 373 U.S. 83 (1963), or pursuant to Jencks Act requirements made applicable to the Commission pursuant to Rule 231, or may be sought by subpoena pursuant to Rule 232 or through other procedures. *See, e.g.*, Freedom of Information Act, 5 U.S.C. 552.

The Rule states that the Division of Enforcement shall (1) make available for inspection and copying (2) documents (3) obtained by the Division (4) in connection with the investigation leading to the institution of proceedings.

(1) The Division of Enforcement is required to make documents available for inspection and copying. It is not required to produce a copy of the documents to each respondent. The definition of documents is based in part on Federal Rule of Civil Procedure 34.

(2) The definition of the term ''documents'' in paragraph (a) is modeled on the definition of documents in Rule 34 of the Federal Rules of Civil Procedure.

(3) The Division of Enforcement's obligation under this rule relates to documents obtained by the Division of Enforcement. Documents located only in the files of other divisions or offices are beyond the scope of the rule.

(4) The ''investigation leading to the Division's recommendation to institute proceedings'' ordinarily is delineated by the investigation number or numbers under which requests for documents, testimony or other information were made. When an investigation is initiated by the Division of Enforcement it is assigned a number, often referred to as the ''case'' or ''investigation'' number. Each request for documents, testimony or other information from persons not employed by the Commission specifies the investigation or preliminary investigation number to which it relates. In turn, each written recommendation by the Division of Enforcement to institute proceedings identifies on its cover page, by investigation number, the source investigation or investigations to which it relates. Accordingly, the identity and content of the appropriate investigation file or files from which documents must be made available can be based on objective criteria.

Comment (b): Under paragraph (b), the Division can withhold documents under four exceptions. Exception (1) shields information subject to a claim of privilege. Exception (2) protects as attorney work product internal documents prepared by Commission employees, which will not be offered in evidence. Work product includes any notes, working papers, memoranda or other similar materials, prepared by an attorney in anticipation of litigation. *See Hickman v. Taylor,* 329 U.S. 495 (1947); *see also* Fed. R. Civ. P. 26(b)(3) and (b)(5). Accountants, paralegals and investigators who work on an investigation do so at the direction of the director, an associate director, an associate regional administrator or another supervisory attorney, and their work product is therefore shielded by the rule. An examination or inspection report prepared by the Division of Market Regulation or the Division of Investment Management is not prepared in anticipation of litigation, and is therefore explicitly excluded from the materials that may be withheld. A respondent's claim that work product should be turned over will necessarily be evaluated on a case-by-case basis.

Exception (3) protects the identity of a confidential source. *See* 5 U.S.C. 552(b)(7)(C) and (D). Exception (4) protects any other document or category of documents that the hearing officer determines may be withheld as not relevant to the subject matter of the proceeding, or otherwise for good cause shown. This exception provides a mechanism to address a situation where a single investigation involves a discrete segment or segments that are related only indirectly, or not at all, to the recommendations ultimately made to the Commission with respect to the particular respondents in a specific proceeding. To require that documents not relevant to the subject matter of the proceeding be made available, simply because they were obtained as part of a broad investigation, burdens the respondent as well as the Division of Enforcement with unnecessary costs and delay.

For example, a single investigation may encompass inquiry into an issuer's allegedly false accounting disclosure and an unrelated manipulation of the issuer's securities by a third party. If the recommendation to the Commission and resulting administrative proceeding involve only the accounting disclosures, the Division could seek leave to withhold trading records, transcripts and other documents related to the manipulation investigation.

Comment (c): The hearing officer may, in his or her discretion, override any exception claimed by the Division and order the Division to produce withheld items.

Comment (g): In some circumstances, for example, where a temporary cease-and-desist order is sought, or where a single formal order is being used to investigate several distinct areas of potential violations, proceedings may be instituted prior to the end of all investigative activities. To allow the hearing officer to take appropriate steps to assure that investigative subpoenas are not used for the purpose of gathering information for use in the proceeding, paragraph (g) requires the Division of Enforcement to notify the hearing officer and each party if the Division is continuing to issue investigative subpoenas under the same investigation file number or order directing private investigation (''formal order'') used in the investigation leading to the institution of proceedings.

Revision Comment: As stated in the proposing release, the intent of the Rule is to codify existing staff practice with respect to voluntarily making available documents for inspection or copying. *See* Comments to proposed Rules 20 and 21, 58 FR 61750–51 (Nov. 22, 1993). The staff practice reflected an informal policy of the Division of Enforcement staff in the Headquarters Office and certain Regional Offices to make available to respondents major portions of the Division's investigation file. The policy evolved over many years and was implemented differently by different offices. Rule 230 seeks to respond to the criticism of commenters without establishing document production requirements, suggested by several commenters, that are not a part of existing practice.

Proposed Rule 20 would have required the production of ''all

documents, including transcripts of testimony, relevant to any allegation in the order instituting proceedings'' and excepted from production various documents including those ''obtained during the course of a pending nonpublic investigation, unless the documents will be relied upon by the interested division during the course of the hearing.'' One commenter suggested that the scope of required production was too narrow and ill defined, thereby providing too much discretion to the Division of Enforcement staff to determine whether a document was relevant. For example, it was suggested that a respondent should be entitled to information relevant to the scope of requested relief as well as allegations of liability. Moreover, the commenter explained, the exception for documents from pending investigations could negate the requirement to produce if the investigation that led to an enforcement proceeding is still continuing with respect to other persons or activities.

With exceptions for documents that are privileged, work product, or would reveal a confidential source, the revised rule requires that documents obtained from persons outside the Commission as part of the investigation leading to institution of proceedings be made available for inspection and copying. In addition, the Division of Enforcement may seek leave of the hearing officer to withhold other documents. The rule no longer calls upon the Division of Enforcement staff to make relevancy determinations.

As proposed, Rule 20 would have allowed the Division to withhold documents ''obtained during the course of a pending nonpublic investigation, unless the documents will be relied upon by the interested division during the course of the hearing.'' This provision was intended to address the possibility, particularly where a temporary cease-and-desist order was sought, that the investigation that led to proceedings was continuing as to other persons or events after the institution of proceedings. As revised, Rule 230 provides that the Division of Enforcement shall promptly inform the hearing officer and each party if investigatory subpoenas are issued under the same investigation file number or pursuant to the same formal order under which the investigation leading to the recommendation to institute proceedings was conducted. The hearing officer will then order such steps as are necessary and appropriate with regard to documents obtained in the ongoing investigation.

In order to provide for the safekeeping of documents subject to inspection, and to control costs associated with implementation of the rule, the revised rule provides that documents shall be made available for inspection and copying at the Commission office where they are ordinarily maintained, or at such other place as the parties may agree. The Commission considered alternatives raised by commenters. None appear more likely to result in prompt access to documents obtained by the Division of Enforcement that are the basis of the Division's allegations.

Rule 231. Enforcement and Disciplinary Proceedings: Production of Witness Statements

(a) *Availability.* Any respondent in an enforcement or disciplinary proceeding may move that the Division of Enforcement produce for inspection and copying any statement of any person called or to be called as a witness by the division that pertains, or is expected to pertain, to his or her direct testimony and that would be required to be produced pursuant to the Jencks Act, 18 U.S.C. 3500. Such production shall be made at a time and place fixed by the hearing officer and shall be made available to any party, provided, however, that the production shall be made under conditions intended to preserve the items to be inspected or copied.

(b) *Failure to Produce—Harmless Error.* In the event that a statement required to be made available for inspection and copying by a respondent is not turned over by the Division of Enforcement, no rehearing or redecision of a proceeding already heard or decided shall be required unless the respondent establishes that the failure to turn over the statement was not harmless error.

Comment: Prior statements by witnesses memorialized in transcripts during the investigation that led to a proceeding fall within the scope of Rule 230 as well as Rule 231. Where the staff believes a witness statement falls outside the purview of the rule, the hearing officer may require that the documents in question be turned over for *in camera* inspection. *See, e.g., In the Matter of Thomas J. Fittin, Jr.*, Exchange Act Release No. 29173, 48 SEC Docket 1474, 1483 (May 21, 1991); *In the Matter of Robert E. Iles, Sr.*, Admin. Proc. Rulings Release No. 367 (Apr. 19, 1990), 52 SEC Docket 750 (Aug. 18, 1992) (order relating to *Brady* v. *Maryland* and Jencks Act issues).

The Jencks Act does not require production of a witness's prior statement until the witness takes the stand. In Commission proceedings administrative law judges often required production prior to the start of the hearing, and the Division of Enforcement now provides such prehearing production voluntarily in most circumstances. Submission of a witness's prior statement, however, may provide a motive for intimidation of that witness or improper contact by a respondent with the witness. The rule provides, therefore, that the time for delivery of witness statements is to be determined by the hearing officer, so that a case-specific determination of such risks can be made if necessary. Upon a showing that there is substantial risk of improper use of a witness's prior statement, the hearing officer may take appropriate steps, for example, delaying production of a prior statement, or prohibiting parties from communicating with particular witnesses.

Rule 232. Subpoenas

(a) *Availability; Procedure.* In connection with any hearing ordered by the Commission, a party may request the issuance of subpoenas requiring the attendance and testimony of witnesses at the designated time and place of hearing, and subpoenas requiring the production of documentary or other tangible evidence returnable at any designated time or place. Unless made on the record at a hearing, requests for issuance of a subpoena shall be made in writing and served on each party pursuant to Rule 150. A person whose request for a subpoena has been denied or modified may not request that any other person issue the subpoena.

(1) *Unavailability of Hearing Officer.* In the event that the hearing officer assigned to a proceeding is unavailable, the party seeking issuance of the subpoena may seek its issuance from the first available of the following persons: the Chief Administrative Law Judge, the law judge most senior in service as a law judge, the duty officer, any other member of the Commission, or any other person designated by the Commission to issue subpoenas. Requests for issuance of a subpoena made to the Commission, or any member thereof, must be submitted to the Secretary, not to an individual Commissioner.

(2) *Signing May be Delegated.* A hearing officer may authorize issuance of a subpoena, and may delegate the manual signing of the subpoena to any other person authorized to issue subpoenas.

(b) *Standards for Issuance.* Where it appears to the person asked to issue the subpoena that the subpoena sought may be unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may, in his or her discretion, as a

condition precedent to the issuance of the subpoena, require the person seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought. If after consideration of all the circumstances, the person requested to issue the subpoena determines that the subpoena or any of its terms is unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena, or issue it only upon such conditions as fairness requires. In making the foregoing determination, the person issuing the subpoena may inquire of the other participants whether they will stipulate to the facts sought to be proved.

(c) *Service.* Service shall be made pursuant to the provisions of Rule 150(b)–(d). The provisions of this paragraph (c) shall apply to the issuance of subpoenas for purposes of investigations, as required by 17 CFR 203.8, as well as hearings.

(d) *Tender of fees required.* When a subpoena compelling the attendance of a person at a hearing or deposition is issued at the instance of anyone other than an officer or agency of the United States, service is valid only if the subpoena is accompanied by a tender to the subpoenaed person of the fees for one day's attendance and mileage specified by paragraph (f) of this rule.

(e) *Application to Quash or Modify. (1) Procedure.* Any person to whom a subpoena is directed or who is an owner, creator or the subject of the documents that are to be produced pursuant to a subpoena may, prior to the time specified therein for compliance, but in no event more than 15 days after the date of service of such subpoena, request that the subpoena be quashed or modified. Such request shall be made by application filed with the Secretary and served on all parties pursuant to Rule 150. The party on whose behalf the subpoena was issued may, within five days of service of the application, file an opposition to the application. If a hearing officer has been assigned to the proceeding, the application to quash shall be directed to that hearing officer for consideration, even if the subpoena was issued by another person.

(2) *Standards Governing Application to Quash or Modify.* If compliance with the subpoena would be unreasonable, oppressive or unduly burdensome, the hearing officer or the Commission shall quash or modify the subpoena, or may order return of the subpoena only upon specified conditions. These conditions may include but are not limited to a requirement that the party on whose behalf the subpoena was issued shall make reasonable compensation to the person to whom the subpoena was addressed for the cost of copying or transporting evidence to the place for return of the subpoena.

(f) *Witness Fees and Mileage.* Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

Comment (a): Rule 232 requires that, unless made on the record at a hearing, subpoena requests must be in writing. *Ex parte,* oral communication with the hearing officer concerning the need for issuance of a subpoena creates the opportunity for unintended and potentially improper discussion of the merits of a case.

Comment (b): Rule 232(b) is based upon Section 555(d) of the Administrative Procedure Act, 5 U.S.C. 555(d).

Revision Comment: Under the former Rule 14 of the Rules of Practice and the proposed rules, neither the fact that a subpoena was sought nor the identity of the person subpoenaed was disclosed. Comment was requested as to whether the identity of the persons subpoenaed should be disclosed to other parties, and if so, when such disclosure should take place. One commenter suggested that the identity of persons subpoenaed should be disclosed to all other parties and an application to quash should be served on all parties. The Commission believes that these suggestions are consistent with other changes made to increase the prehearing exchange of information. Accordingly, Rule 232 has been revised to incorporate these suggestions.

Commenters also suggested that respondents be allowed to issue subpoenas for the purpose of compelling prehearing discovery depositions as is allowed in actions under the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 30(a)(1). Discovery under the Federal Rules of Civil Procedure, including deposition practice, is often a source of delay, extensive collateral disputes and high litigation costs. *See Fair and Efficient Administrative Proceedings: Report of the Task Force on Administrative Proceedings* (1993) at 47–48. One commenter suggested that the disadvantages of oral deposition practice under the Federal Rules of Civil Procedure could be avoided by permitting depositions only by order of the hearing officer; by limiting each respondent to five depositions, unless additional depositions were approved by the hearing officer; and by requiring all depositions to be completed within 90 days of the close of document discovery.

The Commission has weighed the arguments advanced in favor of expanding the scope of prehearing discovery to permit oral depositions as suggested and has concluded that a rule authorizing discovery depositions is not warranted.

First, the Commission's experience in federal court litigation strongly suggests that notwithstanding the proposed restriction for the use of discovery depositions, there remains a significant potential for extensive collateral litigation over their use. Under the commenter's proposal, for example, each respondent could seek leave to take more than five depositions, and might contest, through motions for interlocutory review and arguments on appeal, any denial of additional depositions by the hearing officer.

Second, the suggestion to limit depositions to the 90-day period after the close of ''document discovery'' conflicts with the statutory timetable for cease-and-desist proceedings, the fastest growing category of enforcement proceedings. When a cease-and-desist order is sought, the Commission is required to set a hearing date not earlier than 30 days nor later than 60 days after service of the order instituting proceedings, unless an earlier or a later date is set by the Commission with the consent of a respondent. *See, e.g.,* Exchange Act 21C(b), 15 U.S.C. § 78u–3(b). In a proceeding with multiple respondents, one respondent's decision not to consent to a later hearing date, or to consent to an extension less than that sought by other respondents, would give rise to difficult and time-consuming collateral issues over scheduling, and could necessitate multiple hearings. Even without such complications, a 90-day period for depositions, in addition to a period for inspection and copying of documents, would represent a significant departure from the statute.

Third, the rationale for permitting oral depositions in litigation under the Federal Rules of Civil Procedure does not apply equally to a Commission administrative proceeding. In the typical civil action, where neither party can compel testimony prior to the filing of the complaint, oral depositions play a critical role in permitting evidence to be gathered prior to trial. Also, a plaintiff in the typical civil action is not required before filing to vet a proposed

lawsuit either with the defendant or anyone else. In this context, discovery, including depositions, is a crucial adjunct to motions to dismiss, summary judgment, and other procedural mechanisms designed to allow an assessment by the judge whether the allegations of the complaint are sufficient to warrant trial.

By contrast, in administrative proceedings brought by the Commission, there is ordinarily a detailed pre-institution fact finding investigation and a rigorous pre-institution review process. At the close of the investigation, a respondent is usually told the general conclusions reached by the Division of Enforcement and is afforded an opportunity to submit a written ''Wells'' statement presenting arguments against commencement of an action. *See* Commission's decisions on advisory committee recommendations regarding commencement of enforcement proceedings and termination of staff investigations, Securities Act Release No. 5310, 38 FR 5457 (Mar. 1, 1973). No proceedings are instituted unless a majority of the Commission votes to authorize proceedings after reviewing both a report on the investigation's findings from the Division of Enforcement and any Wells statement that is submitted. If proceedings are authorized, the documents and transcripts obtained from persons not employed by the Commission in the investigation are shared with the respondent. The benefits from and need for oral depositions are therefore different and less important in the context of Commission administrative proceedings than they may be in litigation between private parties under the Federal Rules of Civil Procedure.

Finally, the revised Rules of Practice include two new provisions that address in significant part a respondent's interest in obtaining discovery prior to the start of the hearing. Rule 232 authorizes the issuance of subpoenas *duces tecum* for the production of documents returnable at any designated time or place. Rule 230 mandates that the Division of Enforcement generally make available documents and transcripts of testimony obtained from persons other than employees of the Commission in the investigation leading to the proceeding.

One commenter suggested that the opportunity to review transcripts of investigative depositions was not sufficient. The commenter noted that knowledge gained during an investigation is cumulative. Division of Enforcement staff are unable to question each witness as thoroughly during the course of an investigation, particularly in the early stages, as can be done in a post-investigation deposition. Further, an investigator on the Division of Enforcement staff will not necessarily ask the same questions as would a respondent. Moreover, even where investigative testimony is complete, the transcript provided to respondents is not a full substitute for the opportunity during live testimony to observe a witness's demeanor as well as to hear the content of a witness's answers.

These reasons establish support for an opportunity after the investigation for both the respondent and the Division of Enforcement to subpoena witnesses and question them under oath—an opportunity available at the hearing. They do not establish the need for prehearing depositions as well. Permitting post-investigation, prehearing depositions would afford a respondent information that may be useful in advance of hearing. However, given the newly established right to subpoena documents prior to hearing, the marginal benefits of prehearing depositions are not justified by their likely cost in time, expense, collateral disputes and scheduling complexities.

Rule 233. Depositions Upon Oral Examination

(a) *Procedure.* Any party desiring to take the testimony of a witness by deposition shall make a written motion setting forth the reasons why such deposition should be taken including the specific reasons why the party believes the witness will be unable to attend or testify at the hearing; the name and address of the prospective witness; the matters concerning which the prospective witness is expected to be questioned; and the proposed time and place for the taking of the deposition.

(b) *Required Finding When Ordering a Deposition.* In the discretion of the Commission or the hearing officer, an order for deposition may be issued upon a finding that the prospective witness will likely give testimony material to the proceeding, that it is likely the prospective witness will be unable to attend or testify at the hearing because of age, sickness, infirmity, imprisonment or other disability, and that the taking of a deposition will serve the interests of justice.

(c) *Contents of Order.* An order for deposition shall designate by name a deposition officer. The designated officer may be the hearing officer or any other person authorized to administer oaths by the laws of the United States or of the place where the deposition is to be held. An order for deposition also shall state:

(1) the name of the witness whose deposition is to be taken;

(2) the scope of the testimony to be taken;

(3) the time and place of the deposition;

(4) the manner of recording, preserving and filing the deposition; and

(5) the number of copies, if any, of the deposition and exhibits to be filed upon completion of the deposition.

(d) *Procedure at Depositions.* A witness whose testimony is taken by deposition shall be sworn or shall affirm before any questions are put to him or her. Examination and cross-examination of deponents may proceed as permitted at a hearing. The witness being deposed may have counsel present during the deposition.

(e) *Objections to Questions or Evidence.* Objections to questions or evidence shall be in short form, stating the grounds of objection relied upon. Objections to questions or evidence shall be noted by the deposition officer upon the deposition, but a deposition officer other than the hearing officer shall not have the power to decide on the competency, materiality or relevance of evidence. Failure to object to questions or evidence before the deposition officer shall not be deemed a waiver unless the ground of the objection is one that might have been obviated or removed if presented at that time.

(f) *Filing of Depositions.* The questions propounded and all answers or objections shall be recorded or transcribed verbatim, and a transcript prepared by the deposition officer, or under his or her direction. The transcript shall be subscribed by the witness and certified by the deposition officer. The original deposition and exhibits shall be filed with the Secretary. A copy of the deposition shall be available to the deponent and each party for purchase at prescribed rates.

(g) *Payment.* The cost of the transcript shall be paid by the party requesting the deposition.

Comment: Depositions under the Rules of Practice are used only to preserve testimony of a witness who would be unlikely to be able to attend the hearing. They are not allowed for purposes of discovery. *See In the Matter of Central and South West Corp.,* Admin. Proc. Rulings Release No. 184 (July 14, 1976), 52 SEC Docket 375 (Aug. 18, 1992) (citing *L.M. Rosenthal & Co., Inc.,* Admin. Proc. File No. 3–4330 (Jan. 30, 1974)); *see also In the Matter of Gail G. Griseuk,* Admin. Proc. Rulings Release 440 (Aug. 31, 1994), 57 SEC Docket 1488 (Sept. 27, 1994) (formal

discovery procedures are not available in Commission administrative proceedings).

Comment (c): The criteria for serving as a deposition officer are based on the criteria in Rule 28 of the Federal Rules of Civil Procedure.

Revision Comment (b): Under Proposed Rule 22, the criteria for whether to allow a deposition to be taken were not consistent with the criteria for allowing the deposition to be introduced. As revised, the criteria for permitting a deposition are consistent with the criteria of Rule 235 for introducing a prior sworn statement of a witness.

Depositions are no longer required to be filed under seal, although a confidentiality order may be sought. *See* Rule 322.

Rule 234. Depositions Upon Written Questions

(a) *Availability.* Depositions may be taken and submitted on written questions upon motion of any party. The motion shall include the information specified in Rule 233(a). A decision on the motion shall be governed by the provisions of Rule 233(b).

(b) *Procedure.* Written questions shall be filed with the motion. Within 10 days after service of the motion and written questions, any party may file objections to such written questions and any party may file cross-questions. When a deposition is taken pursuant to this rule no persons other than the witness, counsel to the witness, the deposition officer, and, if the deposition officer does not act as reporter, a reporter, shall be present at the examination of the witness. No party shall be present or represented unless otherwise permitted by order. The deposition officer shall propound the questions and cross-questions to the witness in the order submitted.

(c) *Additional Requirements.* The order for deposition, filing of the deposition, form of the deposition and use of the deposition in the record shall be governed by paragraphs (c) through (g) of Rule 233, except that no cross-examination shall be made.

Comment: The procedures for depositions upon written questions are based in part on Rule 31 of the Federal Rules of Civil Procedure.

Rule 235. Introducing Prior Sworn Statements of Witnesses into the Record

(a) At a hearing, any person wishing to introduce a prior, sworn statement of a witness, not a party, otherwise admissible in the proceeding, may make a motion setting forth the reasons therefor. If only part of a statement is offered in evidence, the hearing officer may require that all relevant portions of the statement be introduced. If all of a statement is offered in evidence, the hearing officer may require that portions not relevant to the proceeding be excluded. A motion to introduce a prior sworn statement may be granted if:

(1) the witness is dead;

(2) the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the prior sworn statement;

(3) the witness is unable to attend or testify because of age, sickness, infirmity, imprisonment or other disability;

(4) the party offering the prior sworn statement has been unable to procure the attendance of the witness by subpoena; or,

(5) in the discretion of the Commission or the hearing officer, it would be desirable, in the interests of justice, to allow the prior sworn statement to be used. In making this determination, due regard shall be given to the presumption that witnesses will testify orally in an open hearing. If the parties have stipulated to accept a prior sworn statement in lieu of live testimony, consideration shall also be given to the convenience of the parties in avoiding unnecessary expense.

Revision Comment: Proposed Rule 22, which addressed the introduction of a deposition as part of the record, did not state whether it applied to any deposition, or only a deposition taken pursuant to the Rules of Practice. Rule 235 specifies the circumstances under which prior sworn statements by a witness are admissible. One commenter suggested making the stipulation of the parties to accept a deposition in lieu of live testimony a factor in determining whether a deposition already taken should be admitted in evidence. The rule was revised accordingly.

Rule 240. Settlement

(a) *Availability.* Any person who is notified that a proceeding may or will be instituted against him or her, or any party to a proceeding already instituted, may, at any time, propose in writing an offer of settlement.

(b) *Procedure.* An offer of settlement shall state that it is made pursuant to this rule; shall recite or incorporate as a part of the offer the provisions of paragraphs (c)(4) and (5) of this rule; shall be signed by the person making the offer, not by counsel; and shall be submitted to the interested division.

(c) *Consideration of Offers of Settlement.* (1) Offers of settlement shall be considered by the interested division when time, the nature of the proceedings, and the public interest permit.

(2) Where a hearing officer is assigned to a proceeding, the interested division and the party submitting the offer may request that the hearing officer express his or her views regarding the appropriateness of the offer of settlement. A request for the hearing officer to express his or her views on an offer of settlement or otherwise to participate in a settlement conference constitutes a waiver by the persons making the request of any right to claim bias or prejudgment by the hearing officer based on the views expressed.

(3) The interested division shall present the offer of settlement to the Commission with its recommendation, except that, if the division's recommendation is unfavorable, the offer shall not be presented to the Commission unless the person making the offer so requests.

(4) By submitting an offer of settlement, the person making the offer waives, subject to acceptance of the offer:

(i) all hearings pursuant to the statutory provisions under which the proceeding is to be or has been instituted;

(ii) the filing of proposed findings of fact and conclusions of law;

(iii) proceedings before, and an initial decision by, a hearing officer;

(iv) all post-hearing procedures; and

(v) judicial review by any court.

(5) By submitting an offer of settlement the person further waives:

(i) such provisions of the Rules of Practice or other requirements of law as may be construed to prevent any member of the Commission's staff from participating in the preparation of, or advising the Commission as to, any order, opinion, finding of fact, or conclusion of law to be entered pursuant to the offer; and

(ii) any right to claim bias or prejudgment by the Commission based on the consideration of or discussions concerning settlement of all or any part of the proceeding.

(6) If the Commission rejects the offer of settlement, the person making the offer shall be notified of the Commission's action and the offer of settlement shall be deemed withdrawn. The rejected offer shall not constitute a part of the record in any proceeding against the person making the offer, provided, however, that rejection of an offer of settlement does not affect the continued validity of waivers pursuant to paragraph (c)(5) of this rule with respect to any discussions concerning the rejected offer of settlement.

(7) Final acceptance of any offer of settlement will occur only upon the issuance of findings and an order by the Commission.

Comment: In proceedings required to be conducted ''on the record,'' Section 554(c) of the Administrative Procedure Act, 5 U.S.C. § 554(c), requires that administrative agencies give interested parties the opportunity for the submission and consideration of offers of settlement ''when time, the nature of the proceeding, and the public interest permit.'' *Cf.* Table I, Subpart D, 17 CFR 201 (listing Commission proceedings required to be conducted ''on the record''). It is the Commission's practice to provide such an opportunity in all proceedings, whether or not the proceeding is required to be conducted ''on the record.''

Although the staff is authorized to participate in settlement negotiations under various circumstances, the Commission must approve every settlement.

Rule 240 addresses offers of settlement made both prior to and after the institution of proceedings. The Rule requires each offer of settlement to recite or incorporate as part of the offer the provisions of paragraphs (c)(4) and (5). Certain facts necessary for the Commission to make a reasoned judgment as to whether settlement offer is in the public interest are often available only to the staff that negotiated the proposed settlement. Paragraph (c)(5)(i) requires waiver of any provisions that may be construed to prohibit *ex parte* communications regarding the settlement offer between the Commission and staff involved in litigating the proceeding. Paragraph (c)(5)(ii) requires waiver of any right to claim bias or prejudgment by the Commission arising from the Commission's consideration or discussion concerning settlement of all or any part of the proceeding.

Revision Comment: The Commission considered but declined to accept one commenter's suggestion that the rule regarding settlements should retain a provision of former Rule 8(a)(3) that, where the Commission deemed it appropriate, the Commission also may give the party making an offer an opportunity to make an oral presentation. The Commission considers hundreds of settlement offers each year. Given the volume of settlements, it would require significant resources to rule on oral presentation requests, to address collateral disputes if a request was denied, and to hear presentations if requests were granted. While the Commission has authority to permit oral presentations at any time, *see* Rule 451, based on its experience, the Commission does not believe that oral presentations by a respondent in support of a written offer of settlement would aid the Commission's decisional process.

Rule 250. Motion for Summary Disposition

(a) After a respondent's answer has been filed and, in an enforcement or a disciplinary proceeding, documents have been made available to that respondent for inspection and copying pursuant to Rule 230, the respondent, or the interested division may make a motion for summary disposition of any or all allegations of the order instituting proceedings with respect to that respondent. If the interested division has not completed presentation of its case in chief, a motion for summary disposition shall be made only with leave of the hearing officer. The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noted pursuant to Rule 323.

(b) The hearing officer shall promptly grant or deny the motion for summary disposition or shall defer decision on the motion. The hearing officer may grant the motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law. If it appears that a party, for good cause shown, cannot present by affidavit prior to hearing facts essential to justify opposition to the motion, the hearing officer shall deny or defer the motion. A hearing officer's decision to deny leave to file a motion for summary disposition is not subject to interlocutory appeal.

(c) The motion for summary disposition, supporting memorandum of points and authorities, and any declarations, affidavits or attachments shall not exceed 35 pages in length.

Comment: The rule applies to enforcement proceedings and disciplinary proceedings as well as any other proceeding in which a hearing is scheduled. Motions for disposition prior to hearing may provide particular benefits in regulatory proceedings. Enforcement or disciplinary proceedings in which a motion for disposition prior to hearing would be appropriate are likely to be less common. Typically, enforcement and disciplinary proceedings that reach litigation involve genuine disagreement between the parties as to material facts. Where a genuine issue as to material facts clearly exists as to an issue, it would be inappropriate for a party to seek leave to file a motion for summary disposition or for a hearing officer to grant the motion. While partial disposition may be appropriate in some cases, a hearing will still often be necessary in order to determine a respondent's state of mind and the need for remedial sanctions if liability is found.

Summary disposition is a procedure that can resolve issues prior to hearing, thereby reducing the costs of hearing and expediting resolution of the proceeding. The possibility that such motions may simplify the proceeding should not be allowed to delay the planned start of the hearing, however. The hearing officer is authorized to set schedules for the submission of summary disposition motions in order to prevent the use of such motions as a tactic for delay or as a means for needlessly increasing the costs of prehearing preparation. The hearing officer may deny or defer a ruling on such a motion if it is not filed timely in light of the prehearing schedule. Nothing in Rule 250 should be construed to create a right to prehearing depositions or other discovery not otherwise provided for by these rules in order to support or oppose such a motion.

Revision Comment: Most major agencies in the federal system have made available some form of summary disposition procedure. *See Puerto Rico Aqueduct & Sewer Authority* v. *EPA*, 35 F.3d 600, 606 (1st Cir. 1994), *cert. denied*, 115 S. Ct. 1096 (1995) (listing agencies that provide for summary disposition). Rule 250 expressly permits a dispositive motion prior to hearing to be made to and decided by the hearing officer, a reversal of practice under former Rule 11(e) which required such decisions to be made by the Commission.

One commenter recommended that the proposed rule allowing for dispositive motions be modified to permit a procedure similar or identical to a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. That commenter also recommended that a summary judgment remedy be available to respondents only, unless a staff motion for summary judgment triggered a respondent's right to take discovery depositions to secure evidence necessary to show the existence of a genuine factual dispute.

The Commission gave detailed consideration to both proposals. Rule 250 balances the potential efficiency gained by allowing the hearing officer to eliminate unnecessary hearings in some

cases against the costs of allowing additional motions, prehearing procedures and the attendant delay in cases where a hearing in which all evidence can be presented and witness demeanor can be observed is warranted.

As noted in the Revision Comment to Rule 232, pretrial procedures developed under the Federal Rules of Civil Procedure, including summary judgment under Rule 56, must be viewed in context. The Federal Rules of Civil Procedure govern a judicial system that deals most frequently with disputes between private parties. Unlike in Commission proceedings, in the typical private party civil action there is no opportunity to conduct a pre-filing investigation with the use of subpoenas; no formal opportunity such as a Wells submission, *see* 17 CFR 202.5(c), for the opposing party to present reasons against the initiation of an action; and no panel of public officials, such as the Commission, that must authorize the filing of a complaint. In addition, because of the priority of criminal caseloads, there is a high premium on providing trial dates for civil matters. Thus, the rationales that justify prehearing summary disposition procedures under the Federal Rules of Civil Procedure do not apply equally to Commission administrative proceedings.

Also as noted in the Revision Comment to Rule 232, the statutory schedule for cease-and-desist proceedings provides no realistic opportunity for summary judgment procedures comparable to those allowed under the Federal Rules of Civil Procedure. It is the Commission's view, therefore, that procedures to allow for the disposition of a case prior to hearing have a potentially useful role in the administrative process, but one that is more limited than summary judgment under the Federal Rules of Civil Procedure.

It was also suggested that the Commission should permit the use of affidavits in support of a motion for summary disposition. The text of the proposed rule did not set forth any limitation on the filing of affidavits in connection with a dispositive motion. The comment to the proposed rule, however, stated that affidavits were not contemplated. After further consideration, the Commission has decided that affidavits or declarations should be allowed, subject to limitations on their length.

Typically, Commission proceedings that reach litigation involve basic disagreement as to material facts. Based on past experience, the circumstances when summary disposition prior to hearing could be appropriately sought or granted will be comparatively rare. Consistent with the goal of various other rules to facilitate the hearing officer's control over the prehearing scheduling, the revised rule requires leave of the hearing officer prior to filing a motion for summary disposition at any time prior to completion of the interested division's case in chief. *See* Rules 221 and 222. Such leave shall be granted only for good cause shown, and if consideration of the motion will not delay the scheduled start of the hearing.

The Commission will monitor closely the use of the procedures for disposition prior to hearing to determine whether they operate as intended to create more streamlined proceedings and an elimination of needless hearings, or whether the availability of such procedures operates as a source of delay, expense or harassment.

Rules Regarding Hearings

Rule 300. Hearings

Hearings for the purpose of taking evidence shall be held only upon order of the Commission. All hearings shall be conducted in a fair, impartial, expeditious and orderly manner.

Rule 301. Hearings to Be Public

All hearings, except hearings on applications for confidential treatment filed pursuant to Rule 190, hearings held to consider a motion for a protective order pursuant to Rule 322, and hearings on *ex parte* application for a temporary cease-and-desist order, shall be public unless otherwise ordered by the Commission on its own motion or the motion of a party. No hearing shall be nonpublic where all respondents request that the hearing be made public.

Rule 302. Record of Hearings

(a) *Recordation.* Unless ordered otherwise by the hearing officer or the Commission, all hearings shall be recorded and a written transcript thereof shall be prepared.

(b) *Availability of a Transcript.* Transcripts of public hearings shall be available for purchase at prescribed rates. Transcripts of nonpublic proceedings, and transcripts subject to a protective order pursuant to Rule 322, shall be available for purchase only by parties, provided, however, that any person compelled to submit data or evidence in a hearing may purchase a copy of his or her own testimony.

(c) *Transcript Correction.* Prior to the filing of post-hearing briefs or proposed findings and conclusions, or within such earlier time as directed by the Commission or the hearing officer, a party or witness may make a motion to correct the transcript. Proposed corrections of the transcript may be submitted to the hearing officer by stipulation pursuant to Rule 324, or by motion. Upon notice to all parties to the proceeding, the hearing officer may, by order, specify corrections to the transcript.

Comment (b): The Administrative Procedure Act (APA) provides that any person compelled to submit data or evidence in a non-investigatory proceeding may purchase a copy of his or her own testimony. *See* 5 U.S.C. 555(c). In addition, Section 11 of the Federal Advisory Committee Act (FACA) requires that an agency make available copies of transcripts of agency proceedings as defined in Section 551(12) of the APA, 5 U.S.C. § 555(c). *See* FACA, 5 U.S.C. App. (1988), 86 Stat. 770.

Rule 310. Failure to Appear at Hearings: Default

Any person named in an order instituting proceedings as a person against whom findings may be made or sanctions imposed who fails to appear at a hearing of which he or she has been duly notified may be deemed to be in default pursuant to Rule 155(a). A party may make a motion to set aside a default pursuant to Rule 155(b).

Rule 320. Evidence: Admissibility

The Commission or the hearing officer may receive relevant evidence and shall exclude all evidence that is irrelevant, immaterial or unduly repetitious.

Comment: Rule 320 restates the Administrative Procedure Act (APA) standard for the reception of evidence. 5 U.S.C. 556(c)(3) and (d). While Section 556 of the APA applies only to proceedings which are ''on the record'' pursuant to 5 U.S.C. 554(a), Rule 320 applies to all proceedings, as defined in Rule 101(a), before the Commission or a hearing officer.

Rule 321. Evidence: Objections and Offers of Proof

(a) *Objections.* Objections to the admission or exclusion of evidence must be made on the record and shall be in short form, stating the grounds relied upon. Exceptions to any ruling thereon by the hearing officer need not be noted at the time of the ruling. Such exceptions will be deemed waived on appeal to the Commission, however, unless raised:

(1) pursuant to interlocutory review in accordance with Rule 400;

(2) in a proposed finding or conclusion filed pursuant to Rule 340; or

(3) in a petition for Commission review of an initial decision filed in accordance with Rule 410.

(b) *Offers of Proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record. Excluded material shall be retained pursuant to Rule 350(b).

Rule 322. Evidence: Confidential Information, Protective Orders

(a) *Procedure.* In any proceeding as defined in Rule 101(a), a party; any person who is the owner, subject or creator of a document subject to subpoena or which may be introduced as evidence; or any witness who testifies at a hearing may file a motion requesting a protective order to limit from disclosure to other parties or to the public documents or testimony that contain confidential information. The motion should include a general summary or extract of the documents without revealing confidential details. If the movant seeks a protective order against disclosure to other parties as well as the public, copies of the documents shall not be served on other parties. Unless the documents are unavailable, the movant shall file for *in camera* inspection a sealed copy of the documents as to which the order is sought.

(b) *Basis for Issuance.* Documents and testimony introduced in a public hearing are presumed to be public. A motion for a protective order shall be granted only upon a finding that the harm resulting from disclosure would outweigh the benefits of disclosure.

(c) *Requests for Additional Information Supporting Confidentiality.* A movant under paragraph (a) of this rule may be required to furnish in writing additional information with respect to the grounds for confidentiality. Failure to supply the information so requested within five days from the date of receipt by the movant of a notice of the information required shall be deemed a waiver of the objection to public disclosure of that portion of the documents to which the additional information relates, unless the Commission or the hearing officer shall otherwise order for good cause shown at or before the expiration of such five-day period.

(d) *Confidentiality of Documents Pending Decision.* Pending a determination of a motion under this rule, the documents as to which confidential treatment is sought and any other documents that would reveal the confidential information in those documents shall be maintained under seal and shall be disclosed only in accordance with orders of the Commission or the hearing officer. Any order issued in connection with a motion under this rule shall be public unless the order would disclose information as to which a protective order has been granted, in which case that portion of the order that would reveal the protected information shall be nonpublic.

Comment: A protective order under Rule 322 is available only in proceedings as defined in Rule 101(a). Rule 322 is distinct from other Commission rules relating to the treatment of requests for preserving the confidentiality of information. *See* 17 CFR 200.83 (providing for procedures by which persons submitting information generally to the Commission can request that the information not be disclosed pursuant to a request under the Freedom of Information Act, 5 U.S.C. § 552). *See also* Rule 190 (specifying procedures by which registrants may request confidential treatment of certain information contained in regulatory filings).

Revision Comment: The former Rules of Practice did not have a provision that specifically allowed the entry of protective orders for documents submitted as evidence in connection with a hearing. Former Rule 25 related solely to applications for confidential treatment of materials filed in connection with registration statements and other such filings and required that confidential treatment be sought at the time of filing. Proposed Rule 33 allowed a party to seek confidential treatment under any ''applicable statute or rule,'' without limiting the scope of materials sought to be protected or the timing of the application. The proposed rule was intended to allow for issuance of a protective order in connection with a hearing. Rule 322 has been added to clarify the availability of protective orders for documents filed or testimony given in an adjudicative proceeding.

Comment was requested as to whether the filing of an application for confidential treatment of evidentiary information should be permitted *ex parte.* The Commission has decided that allowing such filings will not be necessary because Rule 322 allows a party to file a motion containing a general summary or extract of the materials without revealing confidential details.

Rule 323. Evidence: Official Notice

Official notice may be taken of any material fact which might be judicially noticed by a district court of the United States, any matter in the public official records of the Commission, or any matter which is peculiarly within the knowledge of the Commission as an expert body. If official notice is requested or taken of a material fact not appearing in the evidence in the record, the parties, upon timely request, shall be afforded an opportunity to establish the contrary.

Comment: This provision is based on Section 556(e) of the Administrative Procedure Act, 5 U.S.C. § 556(e).

Rule 324. Evidence: Stipulations

The parties may, by stipulation, at any stage of the proceeding agree upon any pertinent facts in the proceeding. A stipulation may be received in evidence and, when received, shall be binding on the parties to the stipulation.

Revision Comment: Stipulation as to facts not in dispute can aid in the efficient conduct of a hearing and reduce costs for all parties. Rule 324 has been added to clarify that stipulations may be entered into at any stage of the proceeding, including prior to the start of the hearing. Rule 324 is based, in part, on Rule 324 of the Model Adjudication Rules, Administrative Conference of the United States (Dec. 1993).

Rule 325. Evidence: Presentation Under Oath or Affirmation

A witness at a hearing for the purpose of taking evidence shall testify under oath or affirmation.

Rule 326. Evidence: Presentation, Rebuttal and Cross-examination

In any proceeding in which a hearing is required to be conducted on the record after opportunity for hearing in accord with 5 U.S.C. 556(a), a party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as, in the discretion of the Commission or the hearing officer, may be required for a full and true disclosure of the facts. The scope and form of evidence, rebuttal evidence, if any, and cross-examination, if any, in any other proceeding shall be determined by the Commission or the hearing officer in each proceeding.

Comment: The requirements of Section 556 of the Administrative Procedure Act, including those regarding the right to present evidence, submit rebuttal evidence and conduct cross-examination, apply only to ''formal'' adjudications: those hearings

required by statute to be conducted ''on the record'' after opportunity for hearing. *See* 5 U.S.C. §§ 554(a), 556(a). In contrast, ''informal'' adjudications are proceedings where the statutory requirement for an ''opportunity for hearing'' does not specifically require the hearing to be held ''on the record.'' The Commission may, but is not required to, follow procedures mandated for ''formal'' adjudications under Section 556 in ''informal'' adjudications. Thus, in cases of ''informal'' adjudication, such as a proceeding as to whether a temporary cease-and-desist order should be entered, the respondent's opportunity to put on live witnesses at the hearing may be limited. *See also* Rule 191 (regarding adjudications not required to be determined on the record after notice and opportunity for hearing); Rules 510–513 (regarding temporary cease-and-desist orders).

Rule 340. Proposed Findings, Conclusions and Supporting Briefs

(a) *Opportunity to File.* Before an initial decision is issued, each party shall have an opportunity, reasonable in light of all the circumstances, to file in writing proposed findings and conclusions together with, or as a part of, its brief.

(b) *Procedure.* Proposed findings of fact must be supported by citations to specific portions of the record. If successive filings are directed, the proposed findings and conclusions of the party assigned to file first shall be set forth in serially numbered paragraphs, and any counter statement of proposed findings and conclusions must, in addition to any other matter, indicate those paragraphs of the proposals already filed as to which there is no dispute. A reply brief may be filed by the party assigned to file first, or, where simultaneous filings are directed, reply briefs may be filed by each party, within the period prescribed therefor by the hearing officer. No further briefs may be filed except with leave of the hearing officer.

(c) *Time for Filing.* In any proceeding in which an initial decision is to be issued:

(1) At the end of each hearing, the hearing officer shall, by order, after consultation with the parties, prescribe the period within which proposed findings and conclusions and supporting briefs are to be filed. The party or parties directed to file first shall make its or their initial filing within 30 days of the end of the hearing unless the hearing officer, for good cause shown, permits a different period and sets forth in the order the reasons why the different period is necessary.

(2) The total period within which all such proposed findings and conclusions and supporting briefs and any counter statements of proposed findings and conclusions and reply briefs are to be filed shall be no longer than 90 days after the close of the hearing unless the hearing officer, for good cause shown, permits a different period and sets forth in an order the reasons why the different period is necessary.

Comment (a): Rule 340 is based on Section 557(c) of the Administrative Procedure Act, 5 U.S.C. § 557(c). By its terms, Section 557(c) applies only to proceedings ''on the record'' after opportunity to be heard. *See* Comment to Rule 326. Consistent with longstanding Commission practice, however, Rule 340 mandates an opportunity for submission of findings and conclusions in any case in which an initial decision is to be prepared, whether or not the proceeding is ''on the record.'' The limitation in Rule 340 that the opportunity to submit proposed findings and conclusions be ''reasonable in light of all the circumstances'' grants the hearing officer or the Commission discretion to restrict the time allowed for filing findings and conclusions. For example, in emergency proceedings, an abbreviated period might be appropriate. Rule 340 does not apply to proceedings in which the Commission itself presides at the taking of evidence since no initial decision is issued in such circumstances. In such a case—for example, where a temporary cease-and-desist order is sought—the Commission has complete discretion whether to allow for post-hearing submissions.

The rule requires that each proposed finding must be supported by appropriate citations to the record. Filings that fail to meet this requirement may be subject to sanctions pursuant to Rule 180.

Rule 350. Record in Proceedings Before Hearing Officer; Retention of Documents; Copies

(a) *Contents of the Record.* The record shall consist of:

(1) the order instituting proceedings, each notice of hearing and any amendments;

(2) each application, motion, submission or other paper, and any amendments, motions, objections, and exceptions to or regarding them;

(3) each stipulation, transcript of testimony and document or other item admitted into evidence;

(4) each written communication accepted by the hearing officer pursuant to Rule 210;

(5) with respect to a request to disqualify a hearing officer or to allow the hearing officer's withdrawal under Rule 112, each affidavit or transcript of testimony taken and the decision made in connection with the request;

(6) all motions, briefs and other papers filed on interlocutory appeal;

(7) all proposed findings and conclusions;

(8) each written order issued by the hearing officer or Commission; and

(9) any other document or item accepted into the record by the hearing officer.

(b) *Retention of Documents Not Admitted.* Any document offered in evidence but excluded, and any document marked for identification but not offered as an exhibit, shall not be considered a part of the record. The Secretary shall retain any such documents until the later of the date upon which a Commission order ending the proceeding becomes final, or the conclusion of any judicial review of the Commission's order.

(c) *Substitution of Copies.* A true copy of a document may be substituted for any document in the record or any document retained pursuant to paragraph (b) of this rule.

Rule 351. Transmittal of Documents to Secretary; Record Index; Certification

(a) *Transmittal From Hearing Officer to Secretary of Partial Record Index.* The hearing officer may, at any time, transmit to the Secretary motions, exhibits or any other original documents filed with or accepted into evidence by the hearing officer, together with an index of such documents. The hearing officer, may, by order, require the interested division or other persons to assist in promptly transporting such documents from the hearing location to the Office of the Secretary.

(b) *Preparation, Certification of Record Index.* Promptly after the close of the hearing, the hearing officer shall transmit to the Secretary an index of the originals of any motions, exhibits or any other documents filed with or accepted into evidence by the hearing officer that have not been previously transmitted to the Secretary, and the Secretary shall prepare a record index. Prior to issuance of an initial decision, or if no initial decision is to be prepared, within 30 days of the close of the hearing, the Secretary shall transmit the record index to the hearing officer and serve a copy of the record index on each party. Any person may file proposed corrections to the record index with the hearing officer within 15 days of service of the record index. The hearing officer shall, by order, direct whether any

corrections to the record index shall be made. The Secretary shall make such corrections, if any, and issue a revised record index. If an initial decision is to be issued, the initial decision shall include a certification that the record consists of the items set forth in the record index or revised record index issued by the Secretary.

(c) *Final Transmittal of Record Items to the Secretary.* After the close of the hearing, the hearing officer shall transmit to the Secretary originals of any motions, exhibits or any other documents filed with, or accepted into evidence by, the hearing officer, or any other portions of the record that have not already been transmitted to the Secretary. Prior to service of the initial decision by the Secretary, or if no initial decision is to be issued, within 60 days of the close of the hearing, the Secretary shall inform the hearing officer if any portions of the record are not in the Secretary's custody.

Comment: The Office of the Secretary is responsible for custody and safekeeping of administrative proceedings records. Hearings, however, are often held away from the Commission's Headquarters in Washington. Exhibits introduced at such hearings or filings made directly with the hearing officer (*see* Rule 151) may be voluminous. Rule 350 establishes procedures to facilitate and safeguard the transfer to the Secretary of motions, exhibits or other record items filed with the hearing officer. Parties and other persons are afforded a specific opportunity to object if they believe that the certified record is incomplete.

Rule 360. Initial Decision of Hearing Officer

(a) *When Required.* Unless the Commission directs otherwise, the hearing officer shall prepare an initial decision in any proceeding in which the Commission directs a hearing officer to preside at a hearing, provided, however, that an initial decision may be waived by the parties with the consent of the hearing officer pursuant to Rule 202.

(b) *Content.* An initial decision shall include: findings and conclusions, and the reasons or basis therefor, as to all the material issues of fact, law or discretion presented on the record and the appropriate order, sanction, relief, or denial thereof. The initial decision shall also state the time period, not to exceed 21 days after service of the decision, except for good cause shown, within which a petition for review of the initial decision may be filed. The reasons for any extension of time shall be stated in the initial decision. The initial decision shall also include a statement that, as provided in paragraph (d) of this rule:

(1) the initial decision shall become the final decision of the Commission as to each party unless a party files a petition for review of the initial decision or the Commission determines on its own initiative to review the initial decision as to a party; and

(2) if a party timely files a petition for review or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party.

(c) *Filing, Service and Publication.* The hearing officer shall file the initial decision with the Secretary. The Secretary shall promptly serve the initial decision upon the parties and shall promptly publish notice of the filing thereof in the *SEC News Digest.* Thereafter, the Secretary shall publish the initial decision in the *SEC Docket*; provided, however, that in nonpublic proceedings no notice shall be published unless the Commission otherwise directs.

(d) *When Final.* (1) Unless a party or an aggrieved person entitled to review files a petition for review in accordance with the time limit specified in the initial decision, or unless the Commission on its own initiative orders review pursuant to Rule 411, an initial decision shall become the final decision of the Commission.

(2) If a petition for review is timely filed by a party or an aggrieved person entitled to review, or if the Commission upon its own initiative has ordered review of a decision with respect to a party or a person aggrieved who would be entitled to review, the initial decision shall not become final as to that party or person.

(e) *Order of Finality.* In the event that the initial decision becomes the final decision of the Commission with respect to a party, the Commission shall issue an order that the decision has become final as to that party. The order of finality shall state the date on which sanctions, if any, take effect. Notice of the order shall be published in the *SEC News Digest* and the *SEC Docket.*

Comment (a): Paragraph (a) is based on Section 557(b) of the Administrative Procedure Act (APA), 5 U.S.C. § 557(b).

Comment (b): The first sentence of paragraph (b), is based on Section 557(c)(3) of the APA, 5 U.S.C. § 557(c)(3).

Comment (d): Paragraph (d) is based on Sections 557(b) and 704 of the APA, 5 U.S.C. §§ 557(b) and 704. In certain limited circumstances, a non-party may be aggrieved by a decision and entitled to seek review. *See, e.g.,* Exchange Act § 25(a)(1), 15 U.S.C. § 78y(a)(1).

Comment (e): The order of finality provides formal notice that the initial decision will not be reviewed. An initial decision automatically becomes final, however, with the passage of time even if the order of finality is not issued. Formal notice to a respondent that an initial decision has become final is not required for the decision to take effect. A respondent is able to ascertain when the period for filing a petition for review pursuant to Rule 410, or for initiation of review on the Commission's initiative pursuant to Rule 411, has expired. When an initial decision becomes final, any collateral consequences from entry of a final order take effect immediately. Sanctions pursuant to the decision may not be immediately effective, however. Rule 601 specifies when amounts owing pursuant to a disgorgement or penalty order become due. In addition, some period of time may be necessary or appropriate after an initial decision becomes final before sanctions should take effect, for example, to allow a respondent to provide for an orderly termination of a business upon effectiveness of a suspension or bar. Ordinarily, the initial decision will specify when sanctions will take effect if the initial decision becomes final. If the initial decision or applicable rule does not specify when sanctions are to become final, the Commission will enter an appropriate order. The Secretary has delegated authority to fix the date when sanctions become effective. *See* 17 CFR 200.30–7.

Appeal to the Commission and Commission Review

Rule 400. Interlocutory Review

(a) *Availability.* The Commission will not review a hearing officer's ruling prior to its consideration of the entire proceeding in the absence of extraordinary circumstances. The Commission may decline to consider a ruling certified by a hearing officer pursuant to paragraph (c) of this rule if it determines that interlocutory review is not warranted or appropriate under the circumstances. The Commission may, at any time, on its own motion, direct that any matter be submitted to it for review.

(b) *Expedited Consideration.* Interlocutory review of a hearing officer's ruling shall be expedited in every way, consistent with the Commission's other responsibilities.

(c) *Certification Process.* A ruling submitted to the Commission for interlocutory review must be certified in writing by the hearing officer and shall specify the material relevant to the

ruling involved. The hearing officer shall not certify a ruling unless:

(1) his or her ruling would compel testimony of Commission members, officers or employees or the production of documentary evidence in their custody; or

(2) upon application by a party, within five days of the hearing officer's ruling, the hearing officer is of the opinion that:

(i) the ruling involves a controlling question of law as to which there is substantial ground for difference of opinion; and

(ii) an immediate review of the order may materially advance the completion of the proceeding.

(d) *Proceedings Not Stayed.* The filing of an application for review or the grant of review shall not stay proceedings before the hearing officer unless he or she, or the Commission, shall so order. The Commission will not consider the motion for a stay unless the motion shall have first been made to the hearing officer.

Comment: Rule 400 is based in part on rules governing interlocutory review of the decisions of a United States district court by a court of appeals. *See* 28 U.S.C. § 1292(b). In contrast to the practice in the federal judicial system, however, the Commission may take up a matter on its own motion at any time, even if a hearing officer does not certify it for interlocutory review.

The requirement in paragraph (b) that interlocutory review be ''expedited in every way, consistent with the Commission's other responsibilities,'' conforms to the standard for review in Rules 102(e)(3) and 500. Interlocutory matters should be promptly resolved in order to allow for the timely completion of the entire proceeding.

Revision Comment: The structure of this rule has been significantly modified to break out each of the rule's substantive provisions and thereby improve its readability. Other changes in the rule are technical and are intended only to clarify its operation.

One commenter recommended that a hearing officer's decision with respect to a motion that he or she be disqualified be subject to interlocutory review and that the rule contain an express provision making immediately appealable any decision not to quash a subpoena as requested by a third-party recipient. The Commission has decided not to incorporate these recommendations. Either is subject to interlocutory review if the hearing officer determines that the decision meets the standards of paragraph (c). Moreover, the decision whether to subpoena a witness is best made by the hearing officer who is most familiar with the details of the proceeding.

Rule 401. Issuance of Stays

(a) *Procedure.* A request for a stay shall be made by written motion, filed pursuant to Rule 154, and served on all parties pursuant to Rule 150. The motion shall state the reasons for the relief requested and the facts relied upon, and, if the facts are subject to dispute, the motion shall be supported by affidavits or other sworn statements or copies thereof. Portions of the record relevant to the relief sought, if available to the movant, shall be filed with the motion. The Commission may issue a stay based on such motion or on its own motion.

(b) *Scope of Relief.* The Commission may grant a stay in whole or in part, and may condition relief under this rule upon such terms, or upon the implementation of such procedures, as it deems appropriate.

(c) *Stay of a Commission Order.* A motion for a stay of a Commission order may be made by any person aggrieved thereby who would be entitled to review in a federal court of appeals. A motion seeking to stay the effectiveness of a Commission order pending judicial review may be made to the Commission at any time during which the Commission retains jurisdiction over the proceeding.

(d) *Stay of an Action by a Self-Regulatory Organization.*

(1) *Availability.* A motion for a stay of an action by a self-regulatory organization for which the Commission is the appropriate regulatory agency, for which action review may be sought pursuant to Rule 420, may be made by any person aggrieved thereby.

(2) *Summary Entry.* A stay may be entered summarily, without notice and opportunity for hearing.

(3) *Expedited Consideration.* Where the action complained of has already taken effect and the motion for stay is filed within 10 days of the effectiveness of the action, or where the action complained of, will, by its terms, take effect within five days of the filing of the motion for stay, the consideration of and decision on the motion for a stay shall be expedited in every way, consistent with the Commission's other responsibilities. Where consideration will be expedited, persons opposing the motion for a stay may file a statement in opposition within two days of service of the motion unless the Commission, by written order, shall specify a different period.

Comment: The Commission has stated that it ''generally considers four factors'' when evaluating the appropriateness of a stay of its own orders:

(1) whether there is a strong likelihood that a party will succeed on the merits in a proceeding challenging the particular Commission action (or, if the other factors strongly favor a stay, that there is a substantial case on the merits); (2) whether, without a stay, a party will suffer irreparable injury; (3) whether there will be substantial harm to any person if the stay were granted; and (4) whether the issuance of a stay would likely serve the public interest.

Order Preliminarily Considering Whether to Issue Stay Sua Sponte and Establishing Guidelines for Seeking Stay Applications, Exchange Act Release No. 33870 (Apr. 7, 1994), 56 SEC Docket 1189, 1190–91 (Apr. 26, 1994). The evaluation of the factors enumerated by the Commission, according to the release, will vary with the ''equities and circumstances'' of the case before the Commission. *Id. See also In re Hibbard, Brown & Co. et al.*, Admin. Proc. File No. 3–8418, SEC Press Release No. 94–72 (Aug. 2, 1994) at 4.

The General Counsel has been delegated the authority to decide whether a stay should be granted. 17 CFR 200.30–14(g)(5), (6). Such decisions by the General Counsel are subject to review pursuant to Rule 430.

The Commission may condition the grant of a stay on such terms or upon the implementation of such procedures as it deems appropriate. For example, where a respondent seeks a stay of a disgorgement order, the Commission may require safeguards, such as establishment of an escrow, that would assure that funds will be available for payment at a later date if the disgorgement order is upheld.

Comment (c): Rule 401(c) requires that a motion for a stay of a Commission order pending review by a court be made to the Commission while the Commission retains jurisdiction over the proceeding. Other than a temporary cease-and-desist order, which is subject to judicial review in the first instance in a United States District Court, Commission orders are reviewable by a court of appeals. *See, e.g.*, Exchange Act § 25, 15 U.S.C. 78y (governing judicial review of final orders of the Commission generally), Exchange Act § 21C(d)(2), 15 U.S.C. § 78u–3(d)(2) (governing judicial review of temporary cease-and-desist orders). The Commission loses jurisdiction to grant a stay of an order subject to review in a court of appeals only after the record is filed in a court of appeals. *See, e.g.*, Exchange Act §§ 25(a)(3), (c)(2), 15 U.S.C. 78y(a)(3), (c)(2), and Fed. R. App. P. 18.

Comment (d): This paragraph is based on Section 19(d) of the Exchange Act, 15 U.S.C. § 78s(d), and former Exchange Act Rule 19d–2, 17 CFR 240.19d–2 (1994).

The provision for expedited consideration in paragraph (d)(3) is based on the requirement of Section 19(d)(2) that the Commission establish an expedited procedure for consideration and determination of the question of a stay for ''appropriate cases.'' The Commission has established a guideline for the timely determination of such requests. *See* 17 CFR 201.900 (Informal Procedures and Supplementary Information Concerning Adjudicatory Proceedings). A self-regulatory organization controls the effective date of the sanctions it imposes. If it desires additional time to address the issue of whether a stay should issue, it may consider delaying the effective date of its order. If the determination complained of has not taken effect, the time limits for the filing of opposing and reply briefs would be those set forth in Rule 154.

Revision Comment: A commenter suggested that the Commission amend the rule to include substantive standards under which a stay shall be granted or to identify the criteria the Commission applies in considering a request for a stay. As noted in the comment to Rule 401, earlier this year the Commission reiterated in a release the factors generally considered when evaluating the appropriateness of a stay under Section 25(c)(2) of the Exchange Act. Order Preliminarily Considering Whether to Issue Stay Sua Sponte and Establishing Guidelines for Seeking Stay Applications, Exchange Act Release No. 33870 (Apr. 7, 1994). The Commission believes that the long-standing enunciation of its policy with respect to such stays provides sufficient guidance.

A commenter suggested that the Commission reconsider its rule allowing motions for stays of a self-regulatory organization (SRO) determination, including a final SRO disciplinary action, to be made ''at any time.'' The commenter proposed that a person seek a stay within 10 days of the filing of an SRO disciplinary decision pursuant to Section 19(d)(1) of the Exchange Act, 15 U.S.C. 78s(d)(1). The Commission does not agree that respondents should be required to request a stay within such a limited period. Requiring a stay to be sought within a fixed time would place respondents who may have no reason to seek a stay immediately at a disadvantage, as they may be entitled to a stay or other relief as the result of changed circumstances at a later time. *Cf.* Rule 512(e).

Exchange Act Section 19(d)(2) requires that in ''appropriate cases'' the Commission establish an expedited procedure for consideration and determination of the question of a stay. Expedited consideration is appropriate when a sanction or other action complained of has already taken effect or will take effect prior to the time a decision could be made without expedited consideration.

Rule 410. Appeal of Initial Decisions by Hearing Officers

(a) *Petition for Review; When Available.* In any proceeding in which an initial decision is made by a hearing officer, any party, and any other person who would have been entitled to judicial review of the decision entered therein if the Commission itself had made the decision, may file a petition for review of the decision with the Commission.

(b) *Procedure.* The petition for review of an initial decision shall be filed with the Commission within such time after service of the initial decision as prescribed by the hearing officer pursuant to Rule 360(b). The petition shall set forth the specific findings and conclusions of the initial decision as to which exception is taken, together with supporting reasons for each exception. Supporting reasons may be stated in summary form. Any exception to an initial decision not stated in the petition for review, or in a previously filed proposed finding made pursuant to Rule 340, may, at the discretion of the Commission, be deemed to have been waived by the petitioner.

(c) *Financial Disclosure Statement Requirement.* Any person who files a petition for review of an initial decision that asserts that person's inability to pay either disgorgement, interest or a penalty shall file with the opening brief a sworn financial disclosure statement containing the information specified in Rule 630(b).

(d) *Opposition to Review.* A party may seek leave to file a brief in opposition to a petition for review within five days of the filing of the petition. The Commission will grant leave, or order the filing of an opposition on its own motion, only if it determines that briefing will significantly aid the decisional process. A brief in opposition shall identify those issues which do not warrant consideration by the Commission and shall state succinctly the reasons therefore.

(e) *Prerequisite to Judicial Review.* Pursuant to Section 704 of the Administrative Procedure Act, 5 U.S.C. 704, a petition to the Commission for review of an initial decision is a prerequisite to the seeking of judicial review of a final order entered pursuant to such decision.

Comment (a)–(b): Pursuant to Section 557(c) of the Administrative Procedure Act, 5 U.S.C § 557(c), in adjudications required to be conducted ''on the record after opportunity for agency hearing,'' a party is entitled to a reasonable opportunity to file exceptions to the initial decision and supporting reasons for the exceptions or proposed findings or conclusions. The Commission's practice, reflected in paragraph (a), is to provide an opportunity to file exceptions in all proceedings where an initial decision is to be made, not only those in ''on-the-record'' or ''formal'' adjudication. *See* Comments to Rules 100 and 191.

Except in limited cases as specified in Rule 411(b)(1) when the right of appeal is mandatory, the Commission, after considering a petition for review, may determine not to hear an appeal or to limit the issues on appeal. Administrative Procedure Act § 557(b), 5 U.S.C § 557(b) (''[o]n appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule''). *Cf.* Section 4A(b) of the Exchange Act, 15 U.S.C. § 78d–1(b) (providing a right to appeal certain decisions to the Commission).

The standards for granting a petition for review are set forth in Rule 411. Under these standards, the Commission grants a petition for review in virtually all cases. The product of a consensus over many years, this result represents a Commission determination that there is a benefit to joint deliberation by the Commission when exception is taken to an initial decision.

Comment (c): In order to make a determination with respect to whether disgorgement, interest or a penalty is appropriate for a respondent who raises inability to pay as an issue, the Commission must have access to complete and current financial information. Although financial disclosure may have occurred during the course of a hearing, by the time an initial decision and petition for review are filed that information is not likely to be current. Accordingly, a current financial disclosure statement is required if a petition for review raises exceptions concerning inability to pay.

Comment (d): The Commission has rarely found grounds for denial of a petition for review under its long-standing standards for determining whether to grant review, now set forth in Rule 411(b). Therefore, routine opposition to a petition for review

serves little purpose. Accordingly, leave from the Commission must be sought prior to filing an opposition to a petition for review. Where the Commission believes briefing would significantly assist its decisional process, it may grant leave to file an opposition or order such a filing. The Commission has delegated authority to the General Counsel to determine whether to grant requests for leave to file an opposition. *See* 17 CFR 200.30–14.

Revision Comments: Comment was requested as to (1) whether, notwithstanding the potential benefits of preparing a petition for review, the requirement for a petition should be eliminated where an appeal is provided as of right by Section 4A(b) of the Exchange Act; and (2) whether, in light of the Commission's longstanding practice of granting virtually all petitions for review, the requirement of filing a petition for review should be eliminated.

One commenter supported retaining the petition for review and suggested that the petition for review is a more appropriate mechanism for noticing an appeal because it helps clarify issues and provides more information than the notice of appeal used under the Federal Rules of Appellate Procedure.

The Commission grants virtually all petitions for review. Although Commission review in a particular case can be time consuming, it establishes authoritative precedent applicable to other cases and promotes accountability for, and confidence in, the Commission's adjudicatory process. Commission review of those cases in which review is sought has tended to encourage acceptance of hearing officers' decisions and to promote the settlement of cases even prior to hearing in similar cases, thereby reducing the overall adjudicatory workload.

The Commission has decided to retain the petition for review process for all cases including those where a right to appeal is statutorily required. The petition for review is a summary document and requires limited resources to prepare. Requiring the petition, however, enhances the efficiency of the appeals process for both the Commission and parties by focusing attention from an early point on those issues considered most significant by the petitioner. Thus, the petition for review offers substantial benefits both to the Commission and to petitioners.

As proposed, the rule would have allowed the filing of an opposition to review by any person opposing review. As noted by one commenter, given the Commission's practices with respect to the grant of petitions for review, an opposition to review serves little benefit to either the Commission or the parties, except in those rare cases where there is a genuine issue as to the necessity or appropriateness of review. As revised, the rule allows a party to seek leave to file a brief in opposition to a petition for review. The Commission believes this mechanism will limit the unnecessary expenditure of time or resources in routine oppositions to petitions for review while allowing, in appropriate cases, for other parties to be heard in opposition. The Commission retains discretion to direct the filing of an opposition on its motion in any case.

Comment was requested as to whether, after the filing of a petition for review, a 10- or 15-day period would be more realistic for filing a brief in opposition to a petition for review or a petition for summary affirmance. As revised, the Rule provides a 10-day period for a person to seek leave to file an opposition. If leave is granted, the Commission will specify the time allowed for filing a brief. Provisions related specifically to the filing of a motion for summary affirmance have been deleted.

Rule 411. Commission Consideration of Initial Decisions by Hearing Officers

(a) *Scope of Review.* The Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, an initial decision by a hearing officer and may make any findings or conclusions that in its judgment are proper and on the basis of the record.

(b) *Standards for Granting Review Pursuant to a Petition for Review.*

(1) *Mandatory Review.* After a petition for review has been filed, the Commission shall review any initial decision that:

(i) denies any request for action pursuant to Section 8(a) or Section 8(c) of the Securities Act of 1933, 15 U.S.C. 77h (a), (c), or the first sentence of Section 12(d) of the Exchange Act, 15 U.S.C. 78*l*(d);

(ii) suspends trading in a security pursuant to Section 12(k) of the Exchange Act, 15 U.S.C. 78*l*(k); or

(iii) is in a case of adjudication (as defined in 5 U.S.C. 551) not required to be determined on the record after notice and opportunity for hearing (except to the extent there is involved a matter described in 5 U.S.C. 554(a) (1) through (6)).

(2) *Discretionary Review.* The Commission may decline to review any other decision. In determining whether to grant review, the Commission shall consider whether the petition for review makes a reasonable showing that:

(i) a prejudicial error was committed in the conduct of the proceeding; or

(ii) the decision embodies:

(A) a finding or conclusion of material fact that is clearly erroneous; or

(B) a conclusion of law that is erroneous; or

(C) an exercise of discretion or decision of law or policy that is important and that the Commission should review.

(c) *Commission Review Other Than Pursuant to a Petition for Review.* The Commission may, on its own initiative, order review of any initial decision, or a portion of any initial decision, within 21 days after the end of the period established for filing a petition for review pursuant to Rule 410(b) or any brief in opposition to a petition for review permitted pursuant to Rule 410(d). A party who does not intend to file a petition for review, and who desires the Commission's determination whether to order review on its own initiative to be made in a shorter time, may make a motion for an expedited decision, accompanied by a written statement that the party waives its right to file a petition for review. The vote of one member of the Commission, conveyed to the Secretary, shall be sufficient to bring a matter before the Commission for review.

(d) *Limitations on Matters Reviewed.* Review by the Commission of an initial decision shall be limited to the issues specified in the petition for review or the issues, if any, specified in the briefing schedule order issued pursuant to Rule 450(a). On notice to all parties, however, the Commission may, at any time prior to issuance of its decision, raise and determine any other matters that it deems material, with opportunity for oral or written argument thereon by the parties.

(e) *Summary Affirmance.* The Commission may summarily affirm an initial decision based upon the petition for review and any response thereto, without further briefing, if it finds that no issue raised in the petition for review warrants further consideration by the Commission.

(f) *Failure to Obtain a Majority.* In the event a majority of participating Commissioners do not agree to a disposition on the merits, the initial decision shall be of no effect, and an order will be issued in accordance with this result.

Comment (a): Section 557(b) of the Administrative Procedure Act, 5 U.S.C § 557(b), provides that ''[o]n appeal from or review of the initial decision, the agency has all the powers which it

would have in making the initial decision except as it may limit the issues on notice or by rule.''

Comment (b): Paragraph (b) is based, in part, on the requirements of Exchange Act Section 4A, 15 U.S.C. § 78d-1.

Comment (c): Paragraph (c) is based, in part, on the requirements of Exchange Act Section 4A.

Before the Commission determines whether to order review of an issue on its own motion, petitions for review and cross-petitions, if any, should be filed in accordance with Rule 410(b) and opposition briefs, if any, should be filed in accordance with Rule 410(d). Under Rule 411(c), there is a 21-day period after the end of the period for the filing of a petition for review during which the Commission may determine whether to grant review. If time is allowed for filing an opposition, there would be a corresponding increase in the time allowed for the Commission to order review on its own motion.

Comment (e): A provision for summary affirmance was added to the Rules of Practice in 1964 based upon Recommendation Number 9 of the Administrative Conference of the United States (ACUS). *See* also ACUS Recommendation No. 68–6 (suggesting that an agency may accord administrative finality to an initial decision by summarily affirming the initial decision or denying a petition for review). Summary affirmance may be appropriate when exception is taken to conclusions of law, but there is no genuine dispute as to any material facts, or when the Commission believes that deliberation by the Commission would not be useful or appropriate. Summary affirmance has very rarely been granted. *But see In the Matter of Joseph A. Lugo,* Exchange Act Release No. 25982 (Aug. 8, 1988), 41 SEC Docket 946 (Aug 23, 1988) (petitioners failed to file required briefs).

Revision Comment (c): The period during which the Commission can determine whether to grant review on its own initiative has been extended from 15 days to 21 days to conform to the 21-day period allowed in Rule 450(a)(2) for the issuance of a briefing schedule order.

Revision Comment (e): Comment was requested as to whether, in light of the Commission's summarily affirming an initial decision only rarely, the possibility of a summary affirmance should be eliminated. One commenter objected to summary affirmance based solely upon the petition for review and suggested that to the extent that review of an initial decision can be denied at the Commission's discretion, summary affirmance is unnecessary and counteracts the benefits of joint deliberation. The commenter suggested that if summary affirmance is retained it should be considered only after briefs have been filed, and should not be available at all where the Commission has granted review based upon a reasonable showing of error.

While summary affirmance has rarely been used in the past, the Commission's adjudication workload changes over time. Summary affirmance provides a potentially useful mechanism to resolve quickly certain cases. The Commission has decided to retain summary affirmance as a mechanism for disposition of appropriate cases. *See In the Matter of Joseph Lugo,* Admin. Proc. File No. 3–6740 (Aug. 8, 1988), Exchange Act Release No. 25982, 41 SEC Docket 946 (1988) (petitioners failed to file required briefs).

Rule 420. Appeal of Determinations by Self-Regulatory Organizations

(a) *Application for Review; When Available.* An application for review by the Commission may be filed by any person who is aggrieved by a determination of a self-regulatory organization with respect to any

(i) final disciplinary sanction;

(ii) denial or conditioning of membership or participation;

(iii) prohibition or limitation in respect to access to services offered by that self-regulatory organization or a member thereof; or

(iv) bar from association as to which a notice is required to be filed with the Commission pursuant to Section 19(d)(1) of the Exchange Act, 15 U.S.C. 78s(d)(1).

(b) *Procedure.* An application for review may be filed with the Commission pursuant to Rule 151 within 30 days after notice of the determination was filed with the Commission pursuant to Section 19(d)(1) of the Exchange Act, 15 U.S.C. 78s(d)(1), and received by the aggrieved person applying for review. The application shall be served by the applicant on the self-regulatory organization. The application shall identify the determination complained of, set forth in summary form a brief statement of alleged errors in the determination and supporting reasons therefor and state an address where the applicant can be served with the record index. The application shall be accompanied by the notice of appearance required by Rule 102(d).

(c) *Determination Not Stayed.* Filing an application for review with the Commission pursuant to paragraph (b) of this rule shall not operate as a stay of the complained of determination made by the self-regulatory organization unless the Commission otherwise orders either pursuant to a motion filed in accordance with Rule 401 or on its own motion.

(d) *Certification of the Record; Service of the Index.* Fourteen days after receipt of an application for review or a Commission order for review, the self-regulatory organization shall certify and file with the Commission one copy of the record upon which the action complained of was taken, and shall file with the Commission three copies of an index to such record, and shall serve upon each party one copy of the index.

Comment: Rule 420 (a) and (b) are based in part on Exchange Act Section 19(d)(2), 15 U.S.C § 78s(d)(2).

Comment (b): It is the responsibility of the person seeking review to assure that the application for review is actually received by the Commission within the time limit provided. *See* Rule 151. While a method of service that provides proof of delivery is not mandatory, in the event there is a question as to whether an application was timely filed, it is the applicant's burden to establish when the filing was made.

Commission review of self-regulatory organization determinations for which an application may be filed pursuant to paragraph (a) is required by statute. The purpose of the statement of alleged errors and supporting reasons is to provide general notice of the basis for the application, not to justify the need for review. Citations to the record are not required because at the time the application is filed the record index has not been served on the applicant.

Revision Comment (a)–(d): Rules 420 and 421 are the only rules within the Rules of Practice limited expressly to self-regulatory organization (SRO) determinations. The substantive provisions of former Exchange Act Rules 19d–2 (concerning applications for stays of SRO determinations) and 19d–3 (concerning applications for review of SRO determinations generally) have been incorporated into Rules 420, 421 and other rules in the Rules of Practice. Rules 19d–2 and 19d–3 have been revised to cross-reference the Rules of Practice. Their substantive provisions have been deleted. These two rules were not deleted entirely at this time in order to provide a transition period for the updating of reference works, materials published by SROs and other guides relied upon by associated persons of SROs or others who seek information about the Commission's review of SRO determinations.

Comment was requested whether, in light of the potential benefits of a

summary statement of the contested issues early in the review process, respondents appealing the determination of an SRO should be required to file a petition for review that includes a statement of the issues on review and the alleged errors by the SRO. The National Association of Securities Dealers (NASD) suggested that the application for review process should require parallel levels of specificity with the petition for review process governing appeals from an initial decision of a hearing officer. The NASD commented that it believes that the Commission's obligation to conduct a *de novo* review of an SRO disciplinary proceeding requires that the Commission apply a non-deferential standard of review, but does not mandate that the Commission raise issues that the party seeking review overlooked.

The NASD suggested, therefore, that the Rules should provide that issues not raised by the party seeking review are deemed waived. The NASD asserted that briefs filed by the NASD with the Commission typically address not only those issues raised by the parties seeking review, but all issues that the NASD believes that the Commission may wish to address. The NASD stated that in its view, ''[i]t is not uncommon for briefs to devote more discussion to issues that are not in dispute than those that have been raised by the parties.'' Letter from T. Grant Callery, V.P. and General Counsel, NASD, to Jonathan G. Katz, Secretary, SEC 25 n.63 (Jan. 31, 1994).

The Commission believes that the *de novo* standard requires consideration of the entire record of a proceeding including material issues on that record, even if the parties have themselves failed to raise those issues. Over the 10-year period from 1983 through 1992, review of NASD disciplinary sanctions has been sought in less than five percent of all cases. Commission opinions on review play a critical role in setting standards for the securities industry. While it is not inconsistent with a *de novo* standard for the Commission to expect the parties to raise material issues and to bring forward relevant portions of the record, the Commission should not, as a matter of policy, ignore material issues or allow errors unaddressed by the parties to stand. Moreover, since the person seeking review would not have a record index at the time an application for review is filed, failure to note an exception at this preliminary stage would not constitute a waiver of any matters.

In response to the suggestions of the NASD, Rule 420 requires the person seeking review to make a summary statement of alleged errors in the determination complained of, so as to give the Commission and other parties notice of issues on review. This procedure allows the Commission to make a more informed briefing schedule order, pursuant to Rule 450, and to provide earlier opportunities for all parties to consider the content of their briefs.

The NASD also suggested that the Rules of Practice should provide that the Commission give parties notice and an opportunity to address any additional issues that the Commission raises in an administrative appeal. The NASD urged that adoption of a policy advising litigants when the Commission is raising an issue sua sponte could make SRO briefs ''more focused, more succinct, and presumably more helpful.''

Revised Rule 421(b) states that the Commission will provide an opportunity for supplemental briefing with respect to issues not raised by the parties when the Commission believes such briefing would significantly aid the decisional process. Supplemental briefing is not appropriate, however, in each case where the parties overlook an issue deemed material by the Commission. For example, where the law on an issue overlooked by the parties is clear, requiring briefs can inject unnecessary delay and expense with no corresponding benefit to the Commission or the parties.

Comment was also requested whether the requirement to include a financial disclosure statement if a respondent makes a claim of inability to pay should be extended to SRO proceedings. One commentator agreed that the requirement should be added, for purposes of consistency, to the rules governing appeals from SRO decisions. The Commission has decided not to add a financial disclosure requirement for appeals of SRO sanctions. The Commission, however, may require additional evidence as to a respondent's claim of inability to pay, including submission of a financial disclosure form, in particular cases. See Rule 452 (regarding additional evidence). A self-regulatory organization may choose to impose a financial disclosure requirement when a person intends to argue an inability to pay on appeal to the self-regulatory organization. Such a financial statement would provide a standardized baseline for consideration of claims of inability to pay.

Rule 421. Commission Consideration of Determinations by Self-Regulatory Organizations

(a) *Commission Review Other than Pursuant to a Petition for Review.* The Commission may, on its own initiative, order review of any determination by a self-regulatory organization that could be subject to an application for review pursuant to Rule 420(a) within 40 days after notice thereof was filed with the Commission pursuant to Section 19(d)(1) of the Exchange Act, 15 U.S.C. 78s(d)(1).

(b) *Supplemental Briefing.* The Commission may at any time prior to issuance of its decision raise or consider any matter that it deems material, whether or not raised by the parties. Notice to the parties and an opportunity for supplemental briefing with respect to issues not briefed by the parties shall be given where the Commission believes that such briefing would significantly aid the decisional process.

Comment: Exchange Act Section 19(e) sets forth standards regarding the scope of the Commission's review of a self-regulatory organizations' imposition of a final disciplinary sanction. Exchange Act Section 19(f) sets forth standards with respect to the Commission's review of a self-regulatory organization's denial of membership or participation to an applicant, the barring of a person from becoming associated with a member of a self-regulatory organization, and a self-regulatory organization's prohibition or limitation of a person with respect to access to services offered by the self-regulatory organization or any member thereof. Among the many opinions in which the Commission and the courts of appeal have explained the scope of the Commission's review under Sections 19(e) and 19(f) are the following: *Schellenbach* v. *SEC,* 989 F.2d 907, 909 (7th Cir. 1993) (in considering an appeal under Section 19(e), Commission undertakes an independent review of facts and law); *Todd & Co.* v. *SEC,* 557 F.2d 1008, 1013 (7th Cir. 1977) (self-regulatory organization rules and actions are subject to full review by Commission, which must base its decision on its own findings); *R.H. Johnson & Co.* v. *SEC,* 198 F.2d 690, 695 (2d Cir.), *cert. denied,* 344 U.S. 855 (1952) (noting that provisions of former 15 U.S.C. § 78o–3 called for *de novo* findings by Commission); *Paul Edward Van Dusen,* 47 S.E.C. 668, 690 (1981) (on appeal taken under Section 19(f), in order to sustain self-regulatory organization's action, Commission must find that grounds on which self-regulatory organization based that action exist, that action was in

accordance with organization's rules, and that those rules are, and were applied in a manner, consistent with purposes of Exchange Act); *Sumner B. Cotzin*, 45 S.E.C. 575, 580 (1974) (''[W]e must make our own findings as to the conduct of applicants seeking review of [self-regulatory organization disciplinary action], determine whether such conduct violated the organization's rules, and, if so, determine whether the sanctions imposed are excessive or oppressive having due regard to the public interest.'').

Comment (a): Rule 421(a) allows the Commission 40 days to determine whether to order review on its own initiative. The time limit for Commission review is tied to the Commission's receipt of the notice required by Exchange Act Section 19(d)(1), not receipt of the notice by the respondent, since the Commission would have no practical way of knowing when such receipt occurred.

Rule 430. Appeal of Actions Made Pursuant to Delegated Authority

(a) *Scope of Rule.* Any person aggrieved by an action made by authority delegated in §§ 200.30–1 through 200.30–17 of this chapter may seek review of the action pursuant to paragraph (b) of this rule.

(b) *Procedure.* (1) *Notice of Intention to Petition for Review.* A party or any person aggrieved by an action made pursuant to delegated authority may seek Commission review of the action by filing a written notice of intention to petition for review within five days after actual notice to the party of the action or service of notice of the action pursuant to Rule 141(b), whichever is earlier. The notice shall identify the petitioner and the action complained of, and shall be accompanied by a notice of appearance pursuant to Rule 102(d).

(2) *Petition for Review.* Within five days after the filing of a notice of intention to petition for review pursuant to paragraph (b)(1) of this rule, the person seeking review shall file a petition for review containing a clear and concise statement of the issues to be reviewed and the reasons why review is appropriate. The petition shall include exceptions to any findings of fact or conclusions of law made, together with supporting reasons for such exceptions based on appropriate citations to such record as may exist. These reasons may be stated in summary form.

(c) *Prerequisite to Judicial Review.* Pursuant to Section 704 of the Administrative Procedure Act, 5 U.S.C. 704, a petition to the Commission for review of an action made by authority delegated in §§ 200.30–1 through 200.30–17 of this chapter is a prerequisite to the seeking of judicial review of a final order entered pursuant to such an action.

Comment (a): Congress granted the Commission explicit authority to delegate certain functions to an individual commissioner, division directors and others in 1962. Pub. L. No. 87–592, 76 Stat. 394. This authority appears in Sections 4A and 4B of the Exchange Act, 15 U.S.C. 78d–1 and 78d–2, and was amended most recently in 1987. *See* Pub. L. No. 100–181, Title III, § 308(a), 101 Stat. 1254. The predecessor rule to Rules 430 and 431, former Rule 26, was adopted in 1963. *See* Securities Act Release No. 4588 (Mar. 8, 1963) (adopting release).

Due to the different nature of matters delegated to hearing officers, senior staff or the duty officer, the Commission's rules provide different mechanisms for review of such actions. *See* Rules 410 and 411 (procedures relating to initial decisions by a hearing officer); 17 CFR 200.43 (procedures relating to duty officer). Rule 430 relates to certain delegations made to staff. It applies only to review of actions taken pursuant to authority delegated in 17 CFR 200.30–1 through 200.30–17. Authority delegated by other provisions—for example, the delegation of authority to issue subpoenas pursuant to a private order directing investigation (''formal order'')—is not subject to the Rule.

Comment (b): Decisions made by division directors or other senior staff pursuant to delegated authority often relate to registration statements, proxy statements, applications, periodic filings or other matters which are highly time sensitive. Generally, the record in actions made pursuant to delegated authority is not extensive. The rule therefore requires a prompt decision by a party as to whether review will be sought. Under Rule 430, a party or other aggrieved person must file a notice of intent to petition for review within five days after actual notice of the decision, or within five days after service of a written decision pursuant to Rule 141(b), whichever is earlier. Actual notice of a decision pursuant to delegated authority may be conveyed by any means, including a telephone call. The required information in a petition for review is essentially the same as that required for a petition for review of a hearing officer's initial decision. *See* Rule 410(b).

Rule 431. Commission Consideration of Actions Made Pursuant to Delegated Authority

(a) *Scope of Review.* The Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, any action made pursuant to authority delegated in §§ 200.30–1 through 200.30–17 of this chapter.

(b) *Standards for Granting Review Pursuant to a Petition for Review.*

(1) *Mandatory Review.* After a petition for review has been filed, the Commission shall review any action that it would be required to review pursuant to Rule 411(b)(1) if the action was made as the initial decision of a hearing officer.

(2) *Discretionary Review.* The Commission may decline to review any other action. In determining whether to grant review, the Commission shall consider the factors set forth in Rule 411(b)(2).

(c) *Commission Review Other Than Pursuant to a Petition for Review.* The Commission may, on its own initiative, order review of any action made pursuant to delegated authority at any time, provided, however, that where there are one or more parties to the matter, such review shall not be ordered more than ten days after the action. The vote of one member of the Commission, conveyed to the Secretary, shall be sufficient to bring a matter before the Commission for review.

(d) *Required Items in an Order for Review.* In an order granting a petition for review or directing review on the Commission's own initiative, the Commission shall set forth the time within which any party or other person may file a statement in support of or in opposition to the action made by delegated authority and shall state whether a stay shall be granted, if none is in effect, or shall be continued, if in effect pursuant to paragraph (e) of this rule.

(e) *Automatic Stay of Delegated Action.* An action made pursuant to delegated authority shall have immediate effect and be deemed the action of the Commission. Upon filing with the Commission of a notice of intention to petition for review, or upon notice to the Secretary of the vote of a Commissioner that a matter be reviewed, an action made pursuant to delegated authority shall be stayed until the Commission orders otherwise, provided, however, there shall be no automatic stay of an action:

(1) to grant a stay of action by the Commission or a self-regulatory organization as authorized by 17 CFR 200.30–14(g)(5)–(6); or

(2) to commence a subpoena enforcement proceeding as authorized by 17 CFR 200.30–4(a)(10).

(f) *Effectiveness of Stay or of Commission Decision to Modify or*

Reverse a Delegated Action. As against any person who shall have acted in reliance upon any action at a delegated level, any stay or any modification or reversal by the Commission of such action shall be effective only from the time such person receives actual notice of such stay, modification or reversal.

Comment: See Comment (a) to Rule 430.

Comment (b): Paragraph (b) is based, in part, on requirements of Exchange Act Section 4A, 15 U.S.C. § 78d-1.

Comment (c): Paragraph (c) is based, in part, on requirements of Exchange Act Section 4A, 15 U.S.C. § 78d-1. In practice, the authority to review decisions on the Commission's own initiative is used very rarely.

Revision Comment (c): Comment was requested as to whether the period in which the Commission could order review on its own initiative should be retained at five days or extended to 15 days. One commenter supported the extension of the period to 10 days. The Commission has adopted a 10-day standard.

Revision Comment (e): After publication of the proposed rules, the delegation to the Director of the Division of Enforcement was amended to permit the Director to authorize a subpoena enforcement proceeding in Federal Court. *See* 17 CFR 200.30–4(a)(10). Under Rule 431, the Director's decision to commence a proceeding is not automatically stayed when notice of intention to file a petition for review is given since a stay would unnecessarily disrupt judicial proceedings commenced on the basis of the Director's decision. The presence of a Federal judge overseeing the subpoena enforcement proceeding makes an automatic stay unnecessary for the limited period before the Commission reviews the Director's decision.

Rule 450. Briefs Filed with the Commission

(a) *Briefing Schedule Order.* Other than review ordered pursuant to Rule 431, if review of a determination is mandated by statute, rule, or judicial order or the Commission determines to grant review as a matter of discretion, the Commission shall issue a briefing schedule order directing the party or parties to file opening briefs and specifying particular issues, if any, as to which briefing should be limited or directed. Unless otherwise provided, opening briefs shall be filed within 40 days of the date of the briefing schedule order. Opposition briefs shall be filed within 30 days after the date opening briefs are due. Reply briefs shall be filed within 14 days after the date opposition briefs are due. No briefs in addition to those specified in the briefing schedule order may be filed except with leave of the Commission. The briefing schedule order shall be issued:

(1) at the time the Commission orders review on its own initiative pursuant to Rules 411 or 421, or orders interlocutory review on its own motion pursuant to Rule 400(a); or

(2) within 21 days, or such longer time as provided by the Commission, after:

(i) the last day permitted for filing a petition for review pursuant to Rule 410(b) or a brief in opposition to a petition for review pursuant to Rule 410(d);

(ii) receipt by the Commission of an index to the record of a determination of a self-regulatory organization filed pursuant to Rule 420(d);

(iii) receipt by the Commission of the mandate of a court of appeals with respect to a judicial remand; or

(iv) certification of a ruling for interlocutory review pursuant to Rule 400(c).

(b) *Contents of Briefs.* Briefs shall be confined to the particular matters at issue. Each exception to the findings or conclusions being reviewed shall be stated succinctly. Exceptions shall be supported by citation to the relevant portions of the record, including references to the specific pages relied upon, and by concise argument including citation of such statutes, decisions and other authorities as may be relevant. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief, in an appendix thereto, or by citation to the record. Reply briefs shall be confined to matters in opposition briefs of other parties.

(c) *Length Limitation.* Opening and opposition briefs shall not exceed 50 pages and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, table of authorities, and any addendum, except with leave of the Commission.

Comment (a): When the Commission reviews an action made by delegated authority pursuant to Rules 430 and 431, briefs are generally not submitted and no briefing schedule order is required.

Under Rule 450, the first brief on the merits would usually be due 40 days from the date of the scheduling order. The rules allot substantial time prior to issuance of the scheduling order for filing of a petition for review or, in the case of an appeal from a self-regulatory organization decision, for filing of a notice pursuant to Exchange Act Rule 19d-1, 17 CFR 240.19d-1, an application for review and the record index. *See* Rule 360 (21-day maximum for filing petition for review of initial decision); Rule 420(b) (30 days for filing application for review of determination by self-regulatory organization); Rule 420(d) (14 days to file record index). The time taken by the Commission to issue the briefing schedule order—up to 21 days in the ordinary case—affords additional time for parties to review the record and begin preparation of a merits brief. Accordingly, requests for extensions of time to file briefs will be disfavored. Failure to file a required brief may be grounds for dismissal. *See* Rule 180(c).

Comment (b): Failure to cite to the record in briefs can result in unnecessary delay, particularly where the record is long. Under Rule 450, the obligation to support claims made in a brief lies with the person submitting the brief. Briefs that fail to include appropriate citations to the record, or to conform to other requirements of the Rules of Practice relating to the form and content of briefs, may be rejected or subject to other sanction. *See* Rule 180(b).

Revision Comment (a): Paragraph (a) requires that if review is granted or ordered, the Commission shall issue a briefing schedule order in all cases except pursuant to Rule 431 for review of an action made pursuant to certain delegated authority. Prior to the submission of merits briefs the Commission will make a formal determination whether to grant petitions for review where review is not mandatory, and in any case may choose to specify particular issues as to which briefing should be limited or directed. Also, where there are cross-petitions for review, there may be particular reasons to designate the side that will file opening briefs. In proceedings arising on review of self-regulatory organization proceedings a scheduling order is useful in assuring that the respondent is on notice of applicable filing deadlines. The briefing schedule order therefore provides an efficient, uniform mechanism for the Commission to address issues raised by a petition for review, to order review on its own initiative if it chooses to do so, and to establish a schedule for the filing of briefs.

As revised, Rule 450 includes a requirement for issuance of a briefing schedule order when the Commission is ordered to conduct further proceedings on remand from a court.

Comment was requested as to whether the time ordinarily allowed for filing of briefs under Rule 450 should be

increased to 45 days for the opening brief, 35 days for a brief in opposition and 21 days for a reply brief. One commenter supported such an increase. The Commission has decided, however, that the presumptive filing deadlines set forth in paragraph (a), which are identical to those under the Federal Rules of Appellate Procedure, are reasonable and do not need to be extended in the typical appeal. *See* Fed. R. App. P. 31.

Unless the Commission provides for a longer time, the Commission will have 21 days to issue the briefing schedule order after the filing of the last petition for review or other filing that triggers the issuance of a briefing schedule order. In the revised rule, this period was increased from 15 days to correspond to the 21-day period allowed the Commission pursuant to Rule 411 to decide whether to order review of an initial decision on its own initiative if no petition for review is received.

Ordinarily, issuance of a briefing schedule order will be a ministerial act, undertaken by staff in the Office of the General Counsel, pursuant to delegated authority. *See* 17 CFR 200.30–14. Timely issuance of the briefing schedule order is a crucial step in assuring that matters on appeal to the Commission are completed promptly. Consistent with the recommendation of the Task Force on Administrative Proceedings that the Commission itself be involved in resolving problems if proceedings are delayed, the delegation to issue a briefing schedule order is limited. *See, Fair and Efficient Administrative Proceedings: Report of the Task Force on Administrative Proceedings* (1993) at 45. If an order is not issued within the 21-day time-frame established by Rule 450, the Secretary shall submit a proposed order for consideration by the Commission.

Rule 451. Oral Argument Before the Commission

(a) *Availability.* The Commission, on its own motion or the motion of a party or any other aggrieved person entitled to Commission review, may order oral argument with respect to any matter. Motions for oral argument with respect to whether to affirm all or part of an initial decision by a hearing officer shall be granted unless exceptional circumstances make oral argument impractical or inadvisable. The Commission will consider appeals, motions and other matters properly before it on the basis of the papers filed by the parties without oral argument unless the Commission determines that the presentation of facts and legal arguments in the briefs and record and the decisional process would be significantly aided by oral argument.

(b) *Procedure.* Requests for oral argument shall be made by separate motion accompanying the initial brief on the merits. The Commission shall issue an order as to whether oral argument is to be heard, and if so, the time and place therefor. The grant or denial of a motion for oral argument shall be made promptly after the filing of the last brief called for by the briefing schedule. If oral argument is granted, the time fixed for oral argument shall be changed only by written order of the Commission, for good cause shown. The order shall state at whose request the change is made and the reasons for any such change.

(c) *Time Allowed.* Unless the Commission orders otherwise, not more than one half-hour per side will be allowed for oral argument. The Commission may, in its discretion, determine that several persons have a common interest, and that the interests represented will be considered a single side for purposes of allotting time for oral argument. Time will be divided equally among persons on a single side, provided, however, that by mutual agreement they may reallocate their time among themselves. A request for additional time must be made by motion filed reasonably in advance of the date fixed for argument.

(d) *Participation of Commissioners.* A member of the Commission who was not present at the oral argument may participate in the decision of the proceeding, provided that the member has reviewed the transcript of such argument prior to such participation. The decision shall state whether the required review was made.

Comment: Rule 451 is based on former Rule of Practice 21(a) and former Exchange Act Rule 19d-3(f).

Comment (c): The term ''side'' is used in this rule to indicate that the time allowed is afforded to opposing interests rather than to individual parties. *See* Fed. R. App. P. 34(b). If multiple appellants or appellees have a common interest, they may constitute only a single side.

Revision Comment (a): Comment was requested as to (1) whether the Commission's practice with respect to granting requests for oral argument should be changed to limit the opportunity for oral argument on appeals from decisions of administrative law judges to the most significant cases; and (2) whether the Commission should change its standards for granting oral argument in self-regulatory organization appeals to allow argument only in the most significant cases—such as cases in which fines exceed certain dollar limits, in which a member or associated person with no prior disciplinary record is permanently barred from membership, or in which the decisional process as to an important matter of law would be significantly aided by oral argument.

The Commission received a number of comments on the proposed changes to its oral argument rule. The commenters were divided as to whether the Commission should change its standards for granting oral argument in self-regulatory organization appeals. Some commenters objected to the Commission's current practice of denying oral argument in such proceedings. The comments were also divided as to whether to support the proposed criteria for identifying self-regulatory organization cases that warrant oral argument. One commenter recommended that the Commission provide for oral argument in cases where self-regulatory organization sanctions (either by fine or permanent membership bar) are significant, or where an important issue of law is in question. Another suggested that certain of the proposed criteria (specifically a large fine or bar against a person without a disciplinary record) would not assist the Commission in identifying those self-regulatory organization cases that warrant oral argument. According to this commenter, the total circumstances of the case should be considered. One commenter suggested that as an alternative to increasing oral argument in self-regulatory organization cases, the Commission consider adopting a policy of requesting additional briefing on issues that are of particular interest and not raised by the parties in their briefs. In response to this comment, the Commission has adopted Rule 421(b) relating to supplemental briefing on review of self-regulatory organization determinations.

One commenter supported the proposal to require that requests for oral argument be set forth in a separate motion accompanying the initial brief on the merits. The Commission believes that this requirement will make oral argument requests more readily identifiable than at present.

Where the Commission itself has instituted proceedings, a respondent has a substantial claim for the opportunity to argue directly to the Commission. In the context of issues presented in appeals from self-regulatory organizations, the Commission has determined that, in general, its decisionmaking process would not be significantly aided by oral argument. Accordingly, after careful consideration of the other comments and given the

Commission's decision to adopt Rule 421(b) on supplemental briefing, the Commission has decided to modify its oral argument rule. The Rule continues the Commission policy of ordinarily granting requests for oral arguments on appeals from an initial decision of an administrative law judge, but not holding oral argument on review of a determination by a self-regulatory organization. The Rule makes clear, however, that oral argument will be allowed where the Commission believes the presentation of facts and legal arguments in the briefs and record and the decisional process would be significantly aided by oral argument.

Rule 452. Additional Evidence

Upon its own motion or the motion of a party, the Commission may allow the submission of additional evidence. A party may file a motion for leave to adduce additional evidence at any time prior to issuance of a decision by the Commission. Such motion shall show with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously. The Commission may accept or hear additional evidence, may remand the proceeding to a self-regulatory organization, or may remand or refer the proceeding to a hearing officer for the taking of additional evidence, as appropriate.

Comment: Rule 452 is based on former Rule 21(d) and former Exchange Act Rule 19d-3(e). *See In the Matter of Jonathan Scott Saluk*, Exchange Act Release No. 35371 (Feb. 14, 1995), 58 SEC Docket 2273 (Mar. 14, 1995) (Order Remanding Proceedings) (remand to a self-regulatory organization to consider new evidence not available when decision was reached); *In the Matter of Klaus Langheinrich*, Exchange Act Release No. 32603 (July 8, 1993), 54 SEC Docket 1376 (July 27, 1993) (Order Remanding Proceedings) (remand on motion of Commission to a self-regulatory organization to supplement record with additional evidence).

Rule 460. Record Before the Commission

The Commission shall determine each matter on the basis of the record.

(a) *Contents of the Record.*

(1) In proceedings for final decision before the Commission other than those reviewing a determination by a self-regulatory organization, the record shall consist of:

(i) all items part of the record below in accordance with Rule 350;

(ii) any petitions for review, cross-petitions or oppositions; and

(iii) all briefs, motions, submissions and other papers filed on appeal or review.

(2) In a proceeding for final decision before the Commission reviewing a determination by a self-regulatory organization, the record shall consist of:

(i) the record certified pursuant to Rule 420(d) by the self-regulatory organization;

(ii) any application for review; and

(iii) any submissions, moving papers, and briefs filed on appeal or review.

(b) *Transmittal of Record to Commission.* Within 14 days after the last date set for filing briefs or such later date as the Commission directs, the Secretary shall transmit the record to the Commission.

(c) *Review of Documents Not Admitted.* Any document offered in evidence but excluded by the hearing officer or the Commission and any document marked for identification but not offered as an exhibit shall not be considered a part of the record before the Commission on appeal but shall be transmitted to the Commission by the Secretary if so requested by the Commission. In the event that the Commission does not request the document, the Secretary shall retain the document not admitted into the record until the later of

(1) the date upon which the Commission's order becomes final, or

(2) the conclusion of any judicial review of that order.

Rule 470. Reconsideration

(a) *Scope of Rule.* A party or any person aggrieved by a determination in a proceeding may file a motion for reconsideration of a final order issued by the Commission.

(b) *Procedure.* A motion for reconsideration shall be filed within 10 days after service of the order complained of on each party, or within such time as the Commission may prescribe upon motion of the person seeking reconsideration, if made within the foregoing 10-day period. The motion for reconsideration shall briefly and specifically state the matters of record alleged to have been erroneously decided, the grounds relied upon, and the relief sought. Except with permission of the Commission, a motion for reconsideration shall not exceed 15 pages. No responses to a motion for reconsideration shall be filed unless requested by the Commission.

Comment: This rule is based in part on former Rules of Practice 21(e), Rules 35 and 40 of the Federal Rules of Appellate Procedure with respect to petitions for rehearing, and Rule 450 of the Model Adjudication Rules, Administrative Conference of the United States (Dec. 1993). The page limit for motions for reconsideration is based on the page limit for petitions for reconsideration before federal courts of appeals. A motion for reconsideration is intended to be an exceptional remedy. As a result, Rule 470 provides that no responses to motions for reconsideration shall be filed unless requested by the Commission.

Rule 490. Receipt of Petitions for Judicial Review Pursuant to 28 U.S.C. 2112(a)(1)

The Commission officer and office designated pursuant to 28 U.S.C. 2112(a)(1) to receive copies of petitions for review of Commission orders from the persons instituting review in a court of appeals, are the Secretary and the Office of the Secretary at the Commission's Headquarters. Ten copies of each petition shall be submitted. Each copy shall state on its face that it is being submitted to the Commission pursuant to 28 U.S.C. 2112 by the person or persons who filed the petition in the court of appeals.

Comment: Unless directed otherwise by statute, appeals of Commission orders and decisions to a court of appeals are instituted by the filing of a petition for review in accordance with the Federal Rules of Appellate Procedure. *See* Fed. R. App. P. 15(a). Section 2112(a)(2) of Title 28 of the U.S. Code requires the Commission to designate the officer and office who must receive copies of any petitions for review of Commission orders filed in the federal courts of appeals.

Persons seeking judicial review of Commission orders should be aware that if the Commission receives, within ten days after approval of its order, petitions for judicial review properly filed in more than one court of appeals, the Judicial Panel on Multidistrict Litigation will randomly select one of those courts to have jurisdiction over all cases challenging the order. *See* 28 U.S.C. 2112(a). If no petition for review is received during the 10-day period and petitions are subsequently filed in two or more courts of appeals, the appeal will be heard in the court of appeals where the first petition for review was filed. *Id.*

Rules Relating to Temporary Orders and Suspensions

Rule 500. Expedited Consideration of Proceedings

Consistent with the Commission's or the hearing officer's other responsibilities, every hearing shall be held and every decision shall be

rendered at the earliest possible time in connection with:

(a) an application for a temporary sanction, as defined in Rule 101(a), or a proceeding to determine whether a temporary sanction should be made permanent;

(b) a motion or application to review an order suspending temporarily the effectiveness of an exemption from registration pursuant to Regulations A, B, E or F under the Securities Act, §§ 230.258, 230.336, 230.610 or 230.656 of this chapter; or,

(c) a motion to or petition to review an order suspending temporarily the privilege of appearing before the Commission under Rule 102(e)(3), or a sanction under Rule 180(a)(1).

Comment: Rule 500's requirement that ''Consistent with the Commission's or the hearing officer's other responsibilities, every hearing shall be held and every decision shall be rendered at the earliest possible time'' is derived from two sources. First, when a temporary cease-and-desist order is entered *ex parte* and the respondent timely seeks Commission review of the decision, the Commission is required by statute to hold a hearing and render its decision ''at the earliest possible time.'' *See, e.g.,* Exchange Act § 21C(d)(1), 15 U.S.C. § 78u–3(d)(1). Second, former Rule 2(e)(3)(iii) contained the requirement that proceedings in connection with Commission review of temporary suspensions of persons appearing or practicing before the Commission ''be expedited in every way consistent with the Commission's other responsibilities.''

The rule requires expedited consideration when temporary sanctions are sought or ordered against a respondent. Temporary sanction orders generally arise from exigent circumstances. Expedited consideration of the decision whether to enter or continue such an order is necessary both to protect the public from harm, by promptly restraining improper ongoing or threatened activities, and to protect the rights of respondents, who may be adversely affected by an application for a temporary sanction even if the sanction is ultimately denied. After a temporary sanction is entered, fairness to the public—especially persons harmed by violative conduct—and to the respondent further dictates expediting proceedings to determine whether a permanent sanction or other appropriate relief is warranted.

The rule also requires expedited consideration of a motion, application or petition to review a temporary suspension of an exemption from registration, a temporary suspension from practice before the Commission pursuant to Rule 102(e)(3), or a sanction for misconduct during the course of the hearing pursuant to Rule 180(a)(1).

Rule 510. Temporary Cease-and-Desist Orders: Application Process

(a) *Procedure.* A request for entry of a temporary cease-and-desist order shall be made by application filed by the Division of Enforcement. The application shall set forth the statutory provision or rule that each respondent is alleged to have violated; the temporary relief sought against each respondent, including whether the respondent would be required to take action to prevent the dissipation or conversion of assets; and whether the relief is sought *ex parte.*

(b) *Accompanying Documents.* The application shall be accompanied by a declaration of facts signed by a person with knowledge of the facts contained therein, a memorandum of points and authorities, a proposed order imposing the temporary relief sought, and, unless relief is sought *ex parte,* a proposed notice of hearing and order to show cause whether the temporary relief should be imposed. If a proceeding for a permanent cease-and-desist order has not already been commenced, a proposed order instituting proceedings to determine whether a permanent cease-and-desist order should be imposed shall also be filed with the application.

(c) *With Whom Filed.* The application shall be filed with the Secretary or, if the Secretary is unavailable, with the duty officer. In no event shall an application be filed with an administrative law judge.

(d) *Record of Proceedings.* Hearings, including *ex parte* presentations made by the Division of Enforcement pursuant to Rule 513, shall be recorded or transcribed pursuant to Rule 302.

Comment (a)–(c): Rule 510 requires requests for a temporary cease-and-desist order be made by application, not motion, to make clear that the time limitations governing the filing of an opposition to a motion do not apply. The information required in the application and accompanying documents is similar to the type of information required in a request for a temporary restraining order under Rule 65(b) of the Federal Rules of Civil Procedure.

The rule requires the Division of Enforcement to file a declaration of facts and a memorandum of points and authorities in order to provide the Commission with a clearly articulated record on which to base the temporary cease-and-desist order. A declaration may be made by a staff member or any other person.

If notice of the application is to be given to the respondent, the rule requires the Division to file a proposed notice of hearing and order to show cause why a temporary cease-and-desist order should not be issued. A proposed temporary order is also required. If warranted, and with such modifications as may be appropriate, these orders can be entered by the Commission without the delay otherwise required while an order is drafted and then submitted to the Commission.

A temporary cease-and-desist order may only be issued pending a proceeding to determine whether to issue a permanent cease-and-desist order. *See, e.g.,* Exchange Act § 21C(c)(1), 15 U.S.C. § 78u–3(c)(1). If an order instituting proceedings has not already been issued, a proposed order is required so that proceedings can be instituted before action is taken on the application for a temporary cease-and-desist order.

The rule also specifies that the application and accompanying documents are to be filed with the Secretary. The Secretary will promptly forward such documents to each Commissioner. If the Secretary is unavailable, the application may be filed with the duty officer. Rule 151(b), which provides generally that a hearing officer may allow filings to be made with the hearing officer, does not authorize the filing of an application for a temporary cease-and-desist order with an administrative law judge, even if the request for a temporary order arises from an ongoing proceeding where an administrative law judge has been assigned.

Comment (d): Rule 302 requires that except as otherwise ordered, all hearings are to be recorded or transcribed. Paragraph (d) clarifies that the appearance of the Division of Enforcement, *ex parte,* to seek entry of a temporary cease-and-desist order after institution of proceedings constitutes a hearing subject to Rule 302. A Commission meeting prior to the institution of proceedings at which the Commission considers a recommendation by the Division of Enforcement that the Commission authorize the filing of an application for a temporary cease-and-desist order is not a hearing, however, and a transcript of the meeting would not be a part of the record or otherwise available to a respondent.

Revision Comment: As proposed, Rule 510 included a provision allowing the Commission to waive the filing of any or all of the supporting documents that

would ordinarily accompany the application for a temporary cease-and-desist order. The proposed rule also provided that proceedings should be recorded or transcribed ''or otherwise memorialized to the extent that circumstances permit.'' As the comments to the proposed rules stated, the possible waiver of requirements with respect to accompanying documents or the creation of a transcript was included in the proposed rule to address limited circumstances such as the need to hold a hearing in emergency circumstances at night, over a weekend, or when no Commissioners were present in Washington, and certain hearing formalities could not be observed. However, as noted by one commenter, the proposed rule was subject to interpretations which could have allowed the use of waivers more frequently than intended. In addition, consideration of a request for a waiver could raise collateral issues that would delay prompt, effective remedial action.

The Commission has authority under these rules, *see, e.g.,* Rule 161 (extension of time to file documents) and Rule 302 (hearings to be recorded and transcribed except as otherwise ordered), and in its inherent powers as an adjudicative body to respond to truly exigent or emergency conditions. The Commission concluded that the extraordinary circumstances justifying the proposed waivers have been so rare that having separate provisions to account for them is unnecessary at this time.

Rule 511. Temporary Cease-and-Desist Orders: Notice; Procedures for Hearing

(a) *Notice: How Given.* Notice of an application for a temporary cease-and-desist order shall be made by serving a notice of hearing and order to show cause pursuant to Rule 141(b) or, where timely service of a notice of hearing pursuant to Rule 141(b) is not practicable, by any other means reasonably calculated to give actual notice that a hearing will be held, including telephonic notification of the general subject matter, time, and place of the hearing. If an application is made *ex parte,* pursuant to Rule 513, no notice to a respondent need be given prior to the Commission's consideration of the application.

(b) *Hearing Before the Commission.* Except as provided in paragraph (d) of this rule, hearings on an application for a temporary cease-and-desist order shall be held before the Commission.

(c) *Presiding Officer: Designation.* The Chairman shall preside or designate a Commissioner to preside at the hearing. If the Chairman is absent or unavailable at the time of hearing and no other Commissioner has been designated to preside, the duty officer on the day the hearing begins shall preside or designate another Commissioner to preside.

(d) *Procedure at Hearing.*

(1) The presiding officer shall have all those powers of a hearing officer set forth in Rule 111 and shall rule on the admissibility of evidence and other procedural matters, including, but not limited to: whether oral testimony will be heard; the time allowed each party for the submission of evidence or argument; and whether post-hearing submission of briefs, proposed findings of fact and conclusions of law will be permitted and if so, the procedures for submission; provided, however, that the person presiding may consult with other Commissioners participating in the hearing on these or any other question of procedure.

(2) Each Commissioner present at the hearing shall be afforded a reasonable opportunity to ask questions of witnesses, if any, or of counsel.

(3) A party or witness may participate by telephone. Alternative means of remote access, including a video link, shall be permitted in the Commission's discretion. Factors the Commission may consider in determining whether to permit alternative means of remote access include, but are not limited to, whether allowing an alternative means of access will delay the hearing, whether the alternative means is reliable, and whether the party proposing its use has made arrangements to pay for its cost.

(4) After a hearing has begun, the Commission may, on its own motion, or the motion of a party, assign a hearing officer to preside at the taking of oral testimony or other evidence and to certify the record of such testimony or other evidence to the Commission within a fixed period of time. No recommended or initial decision shall be made by such a hearing officer.

Comment (a): If an order instituting proceedings has not been issued prior to the filing of an application for a temporary cease-and-desist order, an order instituting proceedings must be entered in conjunction with entry of a notice of hearing and order to show cause. *See, e.g.,* Exchange Act § 21C(c)(1), 15 U.S.C. § 78u–3(c)(1). Provided that the respondent receives actual notice of the hearing, which may be made by telephone, formal service of the order instituting proceedings pursuant to Rule 141 is not required prior to the commencement of the hearing. Absent a waiver, as provided for in Rule 141(a)(4), furnishing a copy of the order by facsimile transmission would not meet the service requirements of Rule 141. At or promptly after the hearing, however, the Secretary must serve a copy of the order instituting proceedings and the notice of hearing in accord with Rule 141 and the Division of Enforcement must serve its application and accompanying documents pursuant to Rule 150.

Comment (b): Rule 101(a) defines the term ''Commission'' to include the duty officer as provided for by 17 CFR 200.43. Pursuant to that section, the duty officer may preside at the taking of evidence.

Comment (d): Hearings held pursuant to the Commission's authority to impose a temporary cease-and-desist order are not required to be formal, ''on the record'' adjudications within the meaning of Sections 554, 556–557 of the Administrative Procedure Act, 5 U.S.C. §§ 554, 556–57. *See Chemical Waste Management, Inc. v. EPA,* 873 F.2d 1477, 1481–82 (D.C. Cir. 1989) (no presumption that a statutory ''hearing'' requirement compels the agency to undertake a formal ''hearing on the record''). A full, trial-type evidentiary hearing will not ordinarily be held because of the exigent nature of the proceedings, the temporary nature of any sanction, and the opportunity for immediate post-sanction review by a federal district court. *See Boddie v. Connecticut,* 401 U.S. 371, 378 (1971) (''The formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings.'').

Rule 511(d) incorporates the statutory provision that the hearing does not have to be a formal, trial-type proceeding. The amount of process due will vary based on the facts and circumstances of each case. *See Boddie,* 401 U.S. at 378. The Commission may determine the form of evidence (for example, whether live or by affidavit), the duration of the hearing (for example, by restricting the time for argument) or the extent of post-hearing procedures (for example, whether to allow submissions of post-hearing briefs). Relevant factors in making these determinations may include, among others, the risk of harm to investors or the public, the nature of the alleged or threatened violations, the nature of the proposed sanction, the potential effect of a sanction on the respondent, and the likely duration of the sanction before opportunity for further hearings.

Ordinarily, the Commission expects that the hearing on an application for a temporary cease-and-desist order will proceed on the basis of affidavits and oral argument in similar fashion to a

hearing on a Commission request under Rule 65 of the Federal Rules of Civil Procedure for a temporary restraining order in federal court.

Due to the exigent circumstances in cases in which a temporary cease-and-desist order would be sought, respondents, their counsel and the participating Commission staff may not be able to be present in Washington, D.C., where the Commission ordinarily meets. The rule provides that parties and witnesses may participate by telephone. Alternative technologies that would allow remote access to the hearing may be used in the Commission's discretion.

Revision Comment (b): The comment to proposed Rule 41 noted the recommendation of the Task Force on Administrative Proceedings that applications for temporary cease-and-desist orders be heard by the Commission. The proposed rules provided, in addition, that a hearing could be held before a hearing officer, which was defined as an administrative law judge or duty officer. While the comment noted that ''the Commission could make such an assignment when an application for a temporary sanction has arisen during the course of a proceeding already assigned to a hearing officer,'' the proposed rule did not, by its terms, limit the proceedings that would be assigned to a hearing officer to such rare circumstances.

Referral of a temporary cease-and-desist order application to a hearing officer for hearing and preparation of an initial decision would likely require approximately three days at a minimum, and up to a week or more, depending upon the time allowed for submission of proposed findings of fact and conclusions of law and for the preparation of the initial decision. It would be inconsistent for the Commission to authorize a proceeding in which the Division of Enforcement alleged that there were exigent circumstances warranting a temporary order and to then assign the matter to a hearing officer for preparation of a non-binding initial decision, which would be subject to briefing and argument to the Commission before a binding order could be entered.

After careful consideration, the Commission has decided to require that hearings on an application for a temporary cease-and-desist order be held before the Commission, not a hearing officer. In judicial proceedings on an application for a temporary restraining order, evidence is often submitted solely by affidavit. Proceedings for a temporary cease-and-desist order also may not involve live testimony. The Rules recognize, however, that testimony may be offered and allowed. *See* Rule 510. Due to considerations of efficiency, expertise and the demands of other Commission business, the Commission itself does not ordinarily preside at the taking of testimony in an enforcement or disciplinary proceeding. In recognition of this fact, the rule permits the Commission to assign a hearing officer to preside solely at the taking of testimony and to certify the resulting record to the Commission, without a recommended or initial decision. There would be no argument, briefing or submissions to the hearing officer.

Rule 512. Temporary Cease-and-Desist Orders: Issuance After Notice and Opportunity for Hearing

(a) *Basis for Issuance.* A temporary cease-and-desist order shall be issued only if the Commission determines that the alleged violation or threatened violation specified in an order instituting proceedings whether to enter a permanent cease-and-desist order pursuant to Securities Act Section 8A(a), 15 U.S.C. 77h–1(a), Exchange Act Section 21C(a), 15 U.S.C. 78u–3(a), Investment Company Act Section 9(f)(1), 15 U.S.C. 80a–9(f)(1), or Investment Advisers Act Section 203(k)(1), 15 U.S.C. 80b–3(k)(1), or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest, including, but not limited to, losses to the Securities Investor Protection Corporation, prior to the completion of proceedings on the permanent cease-and-desist order.

(b) *Content, Scope and Form of Order.* Every temporary cease-and-desist order granted shall:

(1) describe the basis for its issuance, including the alleged or threatened violations and the harm that is likely to result without the issuance of an order;

(2) describe in reasonable detail, and not by reference to the order instituting proceedings or any other document, the act or acts the respondent is to take or refrain from taking; and

(3) be indorsed with the date and hour of issuance.

(c) *Effective Upon Service.* A temporary cease-and-desist order is effective upon service upon the respondent.

(d) *Service: How Made.* Service of a temporary cease-and-desist order shall be made pursuant to Rule 141(a). The person who serves the order shall promptly file a declaration of service identifying the person served, the method of service, the date of service, the address to which service was made and the person who made service; provided, however, failure to file such a declaration shall have no effect on the validity of the service.

(e) *Commission Review.* At any time after the respondent has been served with a temporary cease-and-desist order, the respondent may apply to the Commission to have the order set aside, limited or suspended. The application shall set forth with specificity the facts that support the request.

Comment (a): Rule 512(a) sets forth the statutory criteria for issuance of a temporary cease-and-desist order when the order is preceded by notice and an opportunity to be heard. *See, e.g.,* Exchange Act § 21C(c), 15 U.S.C. § 78u-3(c).

Comment (b): Rule 512(b) requires that a temporary cease-and-desist order describe the basis for the order and the acts that the respondent is to take or refrain from taking to comply with the order. These requirements, which are modeled on Rule 65(d) of the Federal Rules of Civil Procedure, are meant to ensure that a respondent will have adequate notice of the constraints placed upon him or her by the order and to provide the predicate notice for enforcement of the order if the respondent fails to comply with it.

Rule 512(b) also requires that a temporary cease-and-desist order be indorsed with the date and hour of issuance. Although a temporary cease-and-desist order is not effective until served, requiring this indorsement minimizes the potential for disputes over when an order was entered. A similar provision is included in Rule 65(b) of the Federal Rules of Civil Procedure.

Comment (c): A temporary cease-and-desist order becomes effective upon service upon the respondent. *See, e.g.,* Exchange Act § 21C(c)(1), 15 U.S.C. § 78u–3(c)(1).

Comment (e): Paragraph (e) is based on statutory provisions permitting respondents to seek to set aside, limit or suspend a temporary order at any time. *See, e.g.,* Exchange Act § 21C(d)(1), 15 U.S.C. § 78u-3(d)(1).

Rule 513. Temporary Cease-and-Desist Orders: Issuance Without Prior Notice and Opportunity For Hearing

In addition to the requirements for issuance of a temporary cease-and-desist order set forth in Rule 512, the following requirements shall apply if a temporary cease-and-desist order is to be entered without prior notice and opportunity for hearing:

(a) *Basis for Issuance Without Prior Notice and Opportunity for Hearing.* A

temporary cease-and-desist order may be issued without notice and opportunity for hearing only if the Commission determines, from specific facts in the record of the proceeding, that notice and hearing prior to entry of an order would be impracticable or contrary to the public interest.

(b) *Content of the Order.* An *ex parte* temporary cease-and-desist order shall state specifically why notice and hearing would have been impracticable or contrary to the public interest.

(c) *Hearing Before the Commission.* If a respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may apply to the Commission to have the order set aside, limited, or suspended, and if the application is made within 10 days after the date on which the order was served, may request a hearing on such application. The Commission shall hold a hearing and render a decision on such an application at the earliest possible time. The hearing shall begin within two days of the filing of the application unless the applicant consents to a longer period or the Commission, by order, for good cause shown, sets a later date. The Commission shall render a decision on the application within five calendar days of its filing, provided, however, that the Commission, by order, for good cause shown, may extend the time within which a decision may be rendered for a single period of five calendar days, or such longer time as consented to by the applicant. If the Commission does not render its decision within 10 days of the respondent's application or such longer time as consented to by the applicant, the temporary order shall be suspended until a decision is rendered.

(d) *Presiding Officer, Procedure at Hearing.* Procedures with respect to the selection of a presiding officer and the conduct of the hearing shall be in accordance with Rule 511.

Comment (a): The rule sets forth the statutory requirement for entry of a temporary cease-and-desist order without prior notice. *See, e.g.,* Exchange Act § 21C(c)(1), 15 U.S.C. § 78u-3(c)(1). The requirement that the Commission's determination be based on ''specific facts'' is modeled on Rule 65(b) of the Federal Rules of Civil Procedure.

Comment (b): The requirement that an *ex parte* order state why it was issued without notice and hearing is modeled on Rule 65(b) of the Federal Rules of Civil Procedure which requires a similar statement of reasons if a temporary restraining order is issued without notice. A statement of the reasons why an order was entered *ex parte* aids the Commission's decisional process by ensuring that the statutory criteria for *ex parte* action have been met and facilitates review of the order. *See* Rule 514 (*ex parte* order must be appealed to the Commission before seeking judicial review).

Comment (c): Rule 513(c) restates the statutory standards with respect to opportunity for a hearing after service of a temporary cease-and-desist order entered *ex parte. See, e.g.,* Exchange Act § 21C(d)(1), 15 U.S.C. § 78u–3(d)(1). The requirement that a hearing be held and a decision rendered ''at the earliest possible time'' is not elaborated upon in the legislative history.

The Due Process Clause of the Fifth Amendment requires that if a person is subject to an *ex parte* deprivation of property, he or she shall be provided a ''prompt'' opportunity for hearing thereafter. *FDIC* v. *Mallen,* 486 U.S. 230, 241–42 (1988); *Barry* v. *Barchi,* 443 U.S. 55, 65–66 (1979) (hearing must be provided ''at a meaningful time'') (citation omitted). While the hearing must be held and a decision rendered promptly, judicial decisions should be made in a ''considered and deliberate manner,'' and without excessive or undue haste. *Mallen,* 486 U.S. at 244. The Commission must allow an appropriate amount of time for each party to prepare its case prior to hearing and must allow time for each Commissioner to review all evidence or other submissions and, as necessary, to engage in joint deliberation. *See id.* at 243–244. What would be ''possible'' in terms of the earliest time for hearing or resolution of a case would depend, therefore, on the specific facts of each case and the Commission's other responsibilities.

When a temporary cease-and-desist order is entered *ex parte,* the respondent must, as a prerequisite to judicial review of the order, first apply to the Commission to have the order set aside, limited or suspended, and the Commission must then hold a hearing, if requested, and render a decision on the application. *See, e.g.,* Exchange Act § 21C(d)(2), 15 U.S.C. § 78u-3(d)(2). While recognizing that some cases may demand more time than others, Rule 513(c) establishes a maximum time limit on the continuing effectiveness of an *ex parte* order pending its review by the Commission.

Under the rule, a hearing on the application to set aside a temporary cease-and-desist order will begin within two days of the filing of the application, unless the respondent requests a longer period or the Commission determines, by order, for good cause shown, that a longer time is necessary. A temporary cease-and-desist order entered *ex parte* will be suspended, however, if the Commission does not hold the hearing and render a decision on an application to set aside, limit or suspend the order within 10 calendar days of the date of application, or such longer time as consented to by the respondent. While the Commission may take as long as needed to decide the application, after the 10-day period or such longer time as consented to by the respondent, the respondent does not remain bound by the temporary order pending the Commission's decision. If the Commission then upholds the temporary cease-and-desist order, the order will once again become binding and the respondent can seek judicial review.

The time limits set forth in Rule 513 are consistent with the statutory time limits established with respect to orders entered after notice and hearing. If an order is entered after notice and hearing, the respondent is allowed to seek judicial review within 10 days of service of the order. Under Rule 513, a respondent will not be subject to an *ex parte* order for any longer than 10 days prior to having the opportunity to seek judicial review.

The provisions of Rule 513(c) are similar to the provisions of Rule 65(b) of the Federal Rules of Civil Procedure, that a party subject to a temporary restraining order obtained without notice may, on two days notice to the adverse party, or such shorter time as permitted by the court, appear and move for dissolution of the temporary restraining order. Rule 65(b) does not require that a hearing be held or a decision on the motion be issued within the two-day period allowed for the making of a motion to dissolve the temporary restraining order. Rather, the rule requires the court to hear and determine the motion ''as expeditiously as the ends of justice require.'' Such motions are ordinarily resolved within the initial 10-day duration of a temporary restraining order. Extension of an *ex parte* temporary restraining order for an additional ten days, though permitted by rule, is uncommon.

Revision Comment (c): By statute, a respondent given notice and opportunity to be heard prior to entry of a temporary cease-and-desist order may seek judicial review of the order within 10 days of service of the order. In contrast, under the proposed rules a respondent could be subject to a temporary order entered *ex parte* for an indefinite period of time without access to judicial review. Judicial review of an *ex parte* order is unavailable until the Commission acts on the respondent's

application to set aside, limit or suspend the order. The proposed rules established no time limit for the Commission to act or, in the alternative, for the effectiveness of the order. As adopted, the rule includes standards for the start of the hearing on a respondent's application for review of an *ex parte* order and limits the effectiveness of an *ex parte* order to 10 days after the respondent files an application for review of the order.

Rule 514. Temporary Cease-and-Desist Orders: Judicial Review; Duration

(a) *Availability of Judicial Review.* Judicial review of a temporary cease-and-desist order shall be available as provided in Section 8A(d)(2) of the Securities Act, 15 U.S.C. 77h–1(d)(2), Section 21C(d)(2) of the Exchange Act, 15 U.S.C. 78u–3(d)(2), Section 9(f)(4)(B) of the Investment Company Act, 15 U.S.C. 80a–9(f)(4)(B), or Section 203(k)(4)(B) of the Investment Advisers Act, 15 U.S.C. 80b–3(k)(4)(B).

(b) *Duration.* Unless set aside, limited, or suspended, either by order of the Commission, a court of competent jurisdiction, or a hearing officer acting pursuant to Rule 531, or by operation of Rule 513, a temporary cease-and-desist order shall remain effective and enforceable until the earlier of:

(1) the completion of proceedings to determine whether a permanent order shall be entered; or

(2) 180 days, or such longer time as consented to by the respondent, after issuance of a briefing schedule order pursuant to Rule 540(b), if an initial decision whether a permanent order should be entered is appealed.

Comment: Rule 514(b) sets forth provisions governing the duration of a temporary cease-and-desist order. After entry of a temporary cease-and-desist order, proceedings to determine whether a permanent order is warranted will be assigned to an administrative law judge. The case will follow the same procedural steps as any other proceeding assigned to an administrative law judge for hearing. Depending upon the pace of judicial review of the temporary order, the filing of the respondent's answer, prehearing preparation or the hearing on issuance of the permanent order may take place prior to the completion of judicial review of the temporary order.

Unless set aside, limited, or suspended, either by order of the Commission, a court of competent jurisdiction, or a hearing officer acting pursuant to Rule 531, or pursuant to the operation of Rule 513(c), a temporary cease-and-desist order remains effective and enforceable pending issuance of the administrative law judge's initial decision as to whether a permanent order will be issued. *See, e.g.*, Exchange Act § 21C(c)(1), 15 U.S.C. § 78u–3(c)(1).

Rule 500 requires that during the pendency of the temporary order every hearing be held and every decision be rendered at the earliest possible time, consistent with the Commission's or the hearing officer's other responsibilities. The number of respondents, the complexity of the allegations, the number and location of witnesses and other such factors, however, will affect, to a substantial degree, the length of the hearing before the administrative law judge. Rule 530 provides for expedited preparation of an initial decision once the hearing is concluded. When the initial decision is issued, Rule 531 requires that if the original terms of a temporary order are not to be made permanent, the administrative law judge shall set aside, limit or suspend the terms of the order in accordance with their initial decision. *See* 17 CFR 200.30–9 (authority delegated to the administrative law judges to set aside, limit or suspend temporary orders in accord with an initial decision). Hence, if the initial decision denies a permanent cease-and-desist order, the temporary order may be suspended pending any appeal of the initial decision.

If an initial decision would make a pending temporary order permanent the temporary order will not be suspended. If the initial decision is appealed, the Commission may take as long as needed to reach a decision on the need for a permanent order. Rule 514(b) provides, however, that the temporary order shall be suspended after 180 days from issuance of the briefing schedule order pursuant to Rule 540 in connection with the appeal, or such longer time as consented to by the respondent, if the Commission has not issued its decision by that time.

Rule 520. Suspension of Registration of Brokers, Dealers, or other Exchange Act-Registered Entities: Application

(a) *Procedure.* A request for suspension of a registered broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or transfer agent pending a final determination whether the registration shall be revoked shall be made by application filed by the Division of Enforcement. The application shall set forth the statutory provision or rule that each respondent is alleged to have violated and the temporary suspension sought as to each respondent.

(b) *Accompanying Documents.* The application shall be accompanied by a declaration of facts signed by a person with knowledge of the facts contained therein, a memorandum of points and authorities, a proposed order imposing the temporary suspension of registration sought, and a proposed notice of hearing and order to show cause whether the temporary suspension of registration should be imposed. If a proceeding to determine whether to revoke the registration permanently has not already been commenced, a proposed order instituting proceedings to determine whether a permanent sanction should be imposed shall also be filed with the application.

(c) *With Whom Filed.* The application shall be filed with the Secretary or, if the Secretary is unavailable, with the duty officer. In no event shall an application be filed with an administrative law judge.

(d) *Record of Hearings.* All hearings shall be recorded or transcribed pursuant to Rule 302.

Comment: The Exchange Act provides for the Commission's authority to suspend certain entities registered under the Act. *See* Exchange Act §§ 15(b)(5), 15B(c)(3), 15C(c)(1)(B), 17A(c)(4)(A), 15 U.S.C. §§ 78*o*(b)(5), 78*o*–4(c)(3), 78*o*–5(c)(1)(B), 78q–1(c)(4)(A). The procedures for the suspension of Exchange Act-registered entities are based upon the applicable statutory standards and modeled upon provisions applicable to temporary cease-and-desist order proceedings. From 1936 through 1981, the Commission brought over 30 proceedings to suspend temporarily the registration of a broker or dealer pending final determination whether the registration would be permanently revoked. In contrast to practice before 1981, the Rules provide that the Commission, without prior assignment to a hearing officer for initial decision, will decide applications to suspend a registration pending final determination whether the registration should be permanently revoked.

Rule 521. Suspension of Registration of Brokers, Dealers, or Other Exchange Act-Registered Entities: Notice and Opportunity for Hearing on Application

(a) *How Given.* Notice of an application to suspend a registration pursuant to Rule 520 shall be made by serving a notice of hearing and order to show cause pursuant to Rule 141(b) or, where timely service of a notice of hearing pursuant to Rule 141(b) is not practicable, by any other means reasonably calculated to give actual notice that a hearing will be held,

including telephonic notification of the general subject matter, time, and place of the hearing.

(b) *Hearing: Before Whom Held.* Except as provided in paragraph (d) of this rule, hearings on an application to suspend a registration pursuant to Rule 520 shall be held before the Commission.

(c) *Presiding Officer: Designation.* The Chairman shall preside or designate a Commissioner to preside at the hearing. If the Chairman is absent or unavailable at the time of hearing and no other Commissioner has been designated to preside, the duty officer on the day the hearing begins shall preside or designate another Commissioner to preside.

(d) *Procedure at Hearing.* (1) The presiding officer shall have all those powers of a hearing officer set forth in Rule 111 and shall rule on the admissibility of evidence and other procedural matters, including, but not limited to: whether oral testimony will be heard; the time allowed each party for the submission of evidence or argument; and whether post-hearing submission of briefs, proposed findings of fact and conclusions of law will be permitted and if so, the procedures for submission; provided, however, that the person presiding may consult with other Commissioners participating in the hearing on these or any other question of procedure.

(2) Each Commissioner present at the hearing shall be afforded a reasonable opportunity to ask questions of witnesses, if any, or counsel.

(3) A party or witness may participate by telephone. Alternative means of remote access, including a video link, shall be permitted in the Commission's discretion. Factors the Commission may consider in determining whether to permit alternative means of remote access include, but are not limited to, whether allowing an alternative means of access will delay the hearing, whether the alternative means is reliable, and whether the party proposing its use has made arrangements to pay for its cost.

(4) After a hearing has begun, the Commission may, on its own motion or the motion of a party, assign a hearing officer to preside at the taking of oral testimony or other evidence and to certify the record of such testimony or other evidence to the Commission within a fixed period of time. No recommended or initial decision shall be made.

Rule 522. Suspension of Registration of Brokers, Dealers, or other Exchange Act-Registered Entities: Issuance and Review of Order

(a) *Basis for Issuance.* An order suspending a registration, pending final determination as to whether the registration shall be revoked shall be issued only if the Commission finds that the suspension is necessary or appropriate in the public interest or for the protection of investors.

(b) *Content, Scope and Form of Order.* Each order suspending a registration shall:

(1) describe the basis for its issuance, including the alleged or threatened violations and the harm that is likely to result without the issuance of an order;

(2) describe in reasonable detail, and not by reference to the order instituting proceedings or any other document, the act or acts the respondent is to take or refrain from taking; and

(3) be indorsed with the date and hour of issuance.

(c) *Effective Upon Service.* An order suspending a registration is effective upon service upon the respondent.

(d) *Service: How Made.* Service of an order suspending a registration shall be made pursuant to Rule 141(a). The person who serves the order shall promptly file a declaration of service identifying the person served, the method of service, the date of service, the address to which service was made and the person who made service; provided, however, failure to file such a declaration shall have no effect on the validity of the service.

(e) *Commission Review.* At any time after the respondent has been served with an order suspending a registration, the respondent may apply to the Commission or the hearing officer to have the order set aside, limited, or suspended. The application shall set forth with specificity the facts that support the request.

Comment (b): When an order suspending a registration is issued, there may be trades in process or other commitments which the respondent is obligated to meet as well as other ongoing activities which would have to be addressed to permit an orderly cessation of business. The Rule, therefore, requires a description, in reasonable detail of the act or acts the respondent is to take or refrain from taking. To protect investors or the public, the order may provide that a suspension will be effective in stages, or only after a period of time.

Rule 523. [Reserved]

Rule 524. Suspension of Registrations: Duration

Unless set aside, limited or suspended by order of the Commission, a court of competent jurisdiction, or a hearing officer acting pursuant to Rule 531, an order suspending a registration shall remain effective and enforceable until the earlier of:

(a) the completion of proceedings to determine whether the registration shall be permanently revoked; or

(b) 180 days, or such longer time as consented to by the respondent, after issuance of a briefing schedule order pursuant to Rule 540(b), if an initial decision whether the registration shall be permanently revoked is appealed.

Rule 530. Initial Decision on Permanent Order: Timing for Submitting Proposed Findings and Preparation of Decision

Unless otherwise ordered by the Commission or hearing officer, if a temporary cease-and-desist order or suspension of registration order is in effect, the following time limits shall apply to preparation of an initial decision as to whether such order should be made permanent:

(a) proposed findings and conclusions and briefs in support thereof shall be filed 30 days after the close of the hearing;

(b) the record in the proceedings shall be served by the Secretary upon the hearing officer three days after the date for the filing of the last brief called for by the hearing officer; and

(c) the initial decision shall be filed with the Secretary at the earliest possible time, but in no event more than 30 days after service of the record, unless the hearing officer, by order, shall extend the time for good cause shown for a period not to exceed 30 days.

Rule 531. Initial Decision on Permanent Order: Effect on Temporary Order

(a) *Specification of Permanent Sanction.* If, at the time an initial decision is issued, a temporary sanction is in effect as to any respondent, the initial decision shall specify:

(1) which terms or conditions of a temporary cease-and-desist order, if any, shall become permanent; and

(2) whether a temporary suspension of a respondent's registration, if any, shall be made a permanent revocation of registration.

(b) *Modification of Temporary Order.* If any temporary sanction shall not become permanent under the terms of the initial decision, the hearing officer shall issue a separate order setting aside,

limiting or suspending the temporary sanction then in effect in accordance with the terms of the initial decision. The hearing officer shall decline to suspend a term or condition of a temporary cease-and-desist order if it is found that the continued effectiveness of such term or condition is necessary to effectuate any term of the relief ordered in the initial decision, including the payment of disgorgement, interest or penalties. An order modifying temporary sanctions shall be effective 14 days after service. Within one week of service of the order modifying temporary sanctions any party may seek a stay or modification of the order from the Commission pursuant to Rule 401.

Comment: If, after hearing all the evidence as to whether a permanent cease-and-desist order or permanent suspension of registration should be issued, a hearing officer issues an initial decision denying a permanent order, consideration must be given to the necessity for continuation of the temporary order.

Rule 531 requires that the hearing officer modify the temporary sanction order in accordance with the initial decision. *See* 17 CFR 200.30–9 (authority delegated to the administrative law judges to set aside, limit or suspend temporary orders in accord with an initial decision). In order to allow time for each party to seek Commission review of any modification to the temporary sanction, the hearing officer's order will not become effective for 14 days.

The initial decision of the hearing officer to deny a permanent order in whole or in part is reached after all evidence has been heard and briefs have been submitted. By contrast, the decision to enter a temporary sanction, and in the case of a temporary cease-and-desist order, any judicial review, is more limited in scope. Nonetheless, the hearing officer's judgment that continuation of a temporary order is not necessary must be balanced against the fact that the initial decision may be reversed. The Commission's decision whether to stay or modify the hearing officer's order is an interim procedural ruling that is not be subject to judicial review.

Rule 540. Appeal and Commission Review of Initial Decision Making a Temporary Order Permanent

(a) *Petition for Review.* Any person who seeks Commission review of an initial decision as to whether a temporary sanction shall be made permanent shall file a petition for review pursuant to Rule 410, provided, however, that the petition must be filed within 10 days after service of the initial decision.

(b) *Review Procedure.* If the Commission determines to grant or order review, it shall issue a briefing schedule order pursuant to Rule 450. Unless otherwise ordered by the Commission, opening briefs shall be filed within 21 days of the order granting or ordering review, and opposition briefs shall be filed within 14 days after opening briefs are filed. Reply briefs shall be filed within seven days after opposition briefs are filed. Oral argument, if granted by the Commission, shall be held within 90 days of the issuance of the briefing schedule order.

Rule 550. Summary Suspensions Pursuant to Exchange Act Section 12(k)(1)(A)

(a) *Petition for Termination of Suspension.* Any person adversely affected by a suspension pursuant to Section 12(k)(1)(A) of the Exchange Act, 15 U.S.C. 78l(k)(1)(A), who desires to show that such suspension is not necessary in the public interest or for the protection of investors may file a sworn petition with the Secretary, requesting that the suspension be terminated. The petition shall set forth the reasons why the petitioner believes that the suspension of trading should not continue and state with particularity the facts upon which the petitioner relies.

(b) *Commission Consideration of a Petition.* The Commission, in its discretion, may schedule a hearing on the matter, request additional written submissions, or decide the matter on the facts presented in the petition and any other relevant facts known to the Commission. If the petitioner fails to cooperate with, obstructs, or refuses to permit the making of an examination by the Commission, such conduct shall be grounds to deny the petition.

Comment: Exchange Act Section 12(k) authorizes the Commission summarily to suspend trading in securities for 10-day periods, if in its opinion the public interest or the protection of investors so requires. *See* 15 U.S.C. 78*l*(k). Orders suspending trading in particular securities pursuant to Section 12(k)(1)(A) are directed towards a security; they do not name a person or entity as a respondent. Accordingly, Rule 550 establishes a special mechanism to allow persons adversely affected by a suspension to petition for relief.

The usual purpose of a suspension is to alert the investing public that there is insufficient public information about the issuer upon which an informed investment judgment can be made or that the market for the securities may be reacting to manipulative forces or deceptive practices. Consequently, the primary issues normally to be considered by the Commission in determining whether or not a 10-day suspension should be instituted are whether or not there is sufficient public information upon which to base an informed investment decision or whether the market for the security appears to reflect manipulative or deceptive activities.

Rules Regarding Disgorgement and Penalty Payments

Rule 600. Interest on Sums Disgorged

(a) *Interest Required.* Prejudgment interest shall be due on any sum required to be paid pursuant to an order of disgorgement. The disgorgement order shall specify each violation that forms the basis for the disgorgement ordered; the date which, for purposes of calculating disgorgement, each such violation was deemed to have occurred; the amount to be disgorged for each such violation; and the total sum to be disgorged. Prejudgment interest shall be due from the first day of the month following each such violation through the last day of the month preceding the month in which payment of disgorgement is made. The order shall state the amount of prejudgment interest owed as of the date of the disgorgement order and that interest shall continue to accrue on all funds owed until they are paid.

(b) *Rate of Interest.* Interest on the sum to be disgorged shall be computed at the underpayment rate of interest established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), and shall be compounded quarterly. The Commission or the hearing officer may, by order, specify a lower rate of prejudgment interest as to any funds which the respondent has placed in an escrow or otherwise guaranteed for payment of disgorgement upon a final determination of the respondent's liability. Escrow and other guarantee arrangements must be approved by the Commission or the hearing officer prior to entry of the disgorgement order.

Comment: The Commission is authorized to order disgorgement, ''including reasonable interest,'' in any administrative proceeding in which a cease-and-desist order is sought or a civil monetary penalty could be imposed. *See, e.g.,* Exchange Act § 21B(e), 15 U.S.C. 78u–2(e) (monetary penalty proceedings); Exchange Act

§ 21C(e), 15 U.S.C. 78u–3(e) (cease-and-desist proceedings). The purpose of disgorgement in Commission administrative proceedings is to deny a wrongdoer his ill-gotten gains. *See* The Securities Law Enforcement Remedies and Penny Stock Reform Act of 1990, S. Rep. No. 337, 101st Cong., 2d Sess. 16 (1990) (''[D]isgorgement forces a defendant to give up the amount by which he was unjustly enriched.''). Unless prejudgment interest is assessed on funds to be disgorged, the wrongdoer benefits unjustly by having had the equivalent of an interest free loan from the victims of his wrongdoing. In order to effectuate fully the remedial purposes of disgorgement, Rule 600 therefore requires that prejudgment interest be assessed on all funds to be disgorged.

Rule 600 prescribes the payment of prejudgment interest at the underpayment rate of interest established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2). The Commission or hearing officer, by order, may specify a lower rate of prejudgment interest, however, as to funds which the respondent, with the approval of the Commission or hearing officer, and prior to entry of the disgorgement order, placed in an approved escrow or otherwise guaranteed for payment of disgorgement upon a finding of liability. In calculating the rate of prejudgment interest as to such funds, the Commission or hearing officer may take into account the actual interest obtained on the funds while in escrow, with appropriate adjustments for expenses of the escrow or guarantee.

An adjustment to the rate of prejudgment interest may be appropriate if a respondent makes arrangements to escrow or guarantee payment of disputed funds prior to a formal adjudication of liability because the respondent's continuing benefit from those funds is significantly limited. Providing such an adjustment to the prejudgment interest facilitates the prompt and cost-efficient return of investor funds upon a finding of liability, and permits a respondent to limit its liability for prejudgment interest pending resolution of a proceeding. A person who concludes prior to the institution of proceedings that he or she may be liable for disgorgement claims may, in anticipation of proceedings, seek to limit potential prejudgment interest by establishing an escrow or equivalent arrangement on terms in accord with this rule. Such terms would include approval of the escrow by the Commission or by the staff, pursuant to delegated authority.

Revision Comment: A number of comments addressed criteria for whether prejudgment interest should be assessed and what an appropriate rate of prejudgment interest would be. A respondent who wrongfully takes for his own use monies that belong to investors or other persons has received the equivalent of an interest free loan from the victims of his wrongdoing. The proper measurement of the benefit of this loan to the respondent is the cost the respondent would otherwise have paid for a comparable, unsecured loan. The actual use to which the respondent put the funds, or the rate of return the respondent earned is irrelevant. Similarly, it is irrelevant to the calculation of the respondent's economic benefit whether he obtained use of the funds by fraud or negligence. In order to fulfill the remedial purposes of disgorgement, a respondent should never be allowed free use of funds wrongfully obtained from others. Therefore, the Commission concluded that prejudgment interest should be assessed on all funds to be disgorged.

Seeking to determine the specific interest rate for borrowed funds a particular respondent might have obtained in an arms length transaction would involve an inquiry into a wide variety of factors, including unique characteristics of the respondent's credit history and general economic conditions at the time of the violation. Typically, however, the interest rate charged to small entities or individuals for unsecured credit by a lender with no prior relationship to the borrower will be at the prime rate plus two to five points. The Internal Revenue Code underpayment rate of interest established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), a widely published, floating rate based on a fixed margin above the rate for treasury bills, is a reasonable proxy for an unsecured loan rate. Accordingly, Rule 600 prescribes the payment of prejudgment interest at the Internal Revenue Code underpayment rate.

Commenters suggested that a lower rate, such as the treasury bill rate, was a more appropriate measure of prejudgment interest. The treasury bill rate, which reflects the rate paid by the U.S. Government to borrow money, is lower than the cost of funds rate that ordinarily could be obtained by an unsecured, private borrower. That rate, or any other below-market rate for the cost of funds is therefore not an appropriate measure of prejudgment interest to charge in remedial proceedings, where the purpose of the prejudgment interest is to deny a wrongdoer any economic benefit from his violations. One commenter advocated that in assessing prejudgment interest the Commission should be guided by factors which a court would consider in awarding prejudgment interest in a dispute between private parties. The criteria courts use in seeking to balance competing private economic interests, particularly in commercial settings voluntarily entered into by the parties, should not govern assessment of prejudgment interest authorized by statute in a remedial law enforcement action.

The Commission considered whether any other prejudgment interest rate, or a case by case determination of a rate, would be more appropriate than the Internal Revenue Code underpayment rate. No other widely published, floating rate appears to offer a proxy for borrowing costs which would better approximate a typical respondent's cost of funds. A case-by-case approach to assessing prejudgment interest would be unduly complicated, particularly in light of the speculative nature of a post-hoc determination of the costs a particular respondent would have been able to obtain in connection with activities that violated the federal securities laws. Finally, restitution payments or other factors that might be appropriately considered to have diminished the duration of a respondent's use of ill-gotten gains would affect the calculation of disgorgement principal owed at various times, and thereby reduce prejudgment interest by a corresponding amount, but should not alter the rate of interest. Based on all these considerations, the Commission concluded that ordinarily, the IRS underpayment rate is a reasonable and appropriate rate to use in assessing prejudgment interest on disgorgement ordered as the result of remedial administrative proceedings.

If, however, a respondent, with the approval of the Commission or the hearing officer, sets aside allegedly ill-gotten gains in an escrow, or makes other approved arrangements guaranteeing payment upon a finding of liability, the rationale for assessing prejudgment interest at a cost of funds rate is less compelling. Since the rate of return a respondent can earn by placing potential disgorgement funds in a conservative, risk-free investment will ordinarily be less than the rate established under 26 U.S.C. § 6621(a)(2), an adjustment to the rate of prejudgment interest may be appropriate when an approved escrow is established. Cases in which respondents have sought to return or escrow funds prior to a finding of liability have been rare. Rule 600 has

been revised, however, to adopt Commission practice which permits an adjustment to the prejudgment interest rate when an approved escrow or equivalent arrangement is established prior to a finding of liability.

Rule 601. Prompt Payment of Disgorgement, Interest and Penalties

(a) *Timing of Payments.* Unless otherwise provided, funds due pursuant to an order by the Commission requiring the payment of disgorgement, interest or penalties shall be paid no later than 21 days after service of the order, and funds due pursuant to an order by a hearing officer shall be paid on the first day after the order becomes final pursuant to Rule 360.

(b) *Stays.* A stay of any order requiring the payment of disgorgement, interest or penalties may be sought at any time pursuant to Rule 401.

Comment (a): Prompt collection of disgorgement, interest and penalties is essential to prevent a dissipation of assets that would thwart the disgorgement order. Since collection of disgorgement, interest and penalties becomes increasingly more difficult the longer it is delayed, timely determination of whether a respondent will pay disgorgement, interest and penalties as ordered is necessary so that appropriate collection efforts can be initiated. Procedures for execution of a money judgment are not available in an administrative proceeding. If a respondent does not pay disgorgement, interest and penalties as ordered, the Commission must determine whether to seek enforcement of its order by bringing a judicial action or by referring the matter to the Department of Justice for collection. Both processes often require significant periods of time.

Rule 601 provides, therefore, that funds due pursuant to an order by a hearing officer are to be paid on the first day after the order becomes final. Since Rule 360 provides at least a 21-day period before a hearing officer's order becomes final, even if no review of the order is sought, a respondent will have at least 22 days notice before payment is due. If a respondent seeks review of the hearing officer's order, the Commission, by order, must deny the petition for review or affirm the initial decision before payment would be required. Rule 601 provides that disgorgement, interest and penalties owed pursuant to an order by the Commission are to be paid no later than 21 days after service of the order. The one-day and 21-day time periods specified in Rule 601(a) may be modified by order in a particular case.

Rule 610. Submission of Proposed Plan of Disgorgement

The Commission or the hearing officer may, at any time, order any party to submit a plan for the administration and distribution of disgorgement funds. Unless ordered otherwise, the Division of Enforcement shall submit a proposed plan no later than 60 days after funds or other assets have been turned over by the respondent pursuant to a Commission disgorgement order and any appeals of the disgorgement order have been waived or completed, or appeal is no longer available.

Comment: The rules relating to disgorgement are based on the Commission's experience in judicial actions involving disgorgement. In most civil actions the court orders the Commission to submit a proposed plan for administration and distribution of disgorgement funds which, after notice and a hearing, the court later approves, modifies or disapproves. At the hearing, parties and other persons may present their objections to the court. Ordinarily, the Division of Enforcement seeks to avoid disputes over the plan and attempts, when preparing the plan, to consult with other parties and any other persons who have notified the staff or the court of an interest in the disposition of disgorgement funds. Since the development of a disgorgement plan may be a significant undertaking, it is not required in most proceedings until the funds to be disgorged have been transferred from the control of the respondent and, if the disgorgement order is subject to appeal, until after the appeal is decided.

Similar procedures are established under Rules 610 through 614. Rule 610 requires that unless ordered otherwise, the Division of Enforcement shall submit a plan of disgorgement no later than 60 days after funds are turned over by the respondent pursuant to a disgorgement order and appeals of the order, if any, are concluded. In some cases a respondent may be in a better position than the Division of Enforcement to propose a disgorgement plan. Any party, therefore, may be required to submit a plan of disgorgement in addition to or in lieu of the plan of the Division of Enforcement. Also, the presumptive 60-day period set forth in the Rule may be modified by order. For example, in a case with multiple respondents, where some respondents settle and others choose to litigate, it may be appropriate to await the resolution of the case against all respondents before making a determination as to the disposition of disgorgement funds received from those who settled.

Rule 611. Contents of Plan of Disgorgement; Provisions for Payment

(a) *Required Plan Elements.* Unless otherwise ordered, a plan for the administration of a disgorgement fund shall include the following elements:

(1) procedures for the receipt of additional funds, including the specification of an account where funds will be held and the instruments in which the funds may be invested;

(2) specification of categories of persons potentially eligible to receive proceeds from the fund;

(3) procedures for providing notice to such persons of the existence of the fund and their potential eligibility to receive proceeds of the fund;

(4) procedures for making and approving claims, procedures for handling disputed claims and a cut-off date for the making of claims;

(5) a proposed date for the termination of the fund, including provision for the disposition of any funds not otherwise distributed;

(6) procedures for the administration of the fund, including selection, compensation and, as necessary, indemnification of a fund administrator to oversee the fund, process claims, prepare accountings, file tax returns and, subject to the approval of the Commission, make distributions from the fund to investors; and

(7) such other provisions as the Commission or the hearing officer may require.

(b) *Payment to Registry of the Court or Court-Appointed Receiver.* Subject to such conditions as the Commission or the hearing officer shall deem appropriate, a plan of disgorgement may provide for payment of disgorgement funds into a court registry or to a court-appointed receiver in any case pending in federal or state court against a respondent or any other person based upon a complaint alleging violations arising from the same or substantially similar facts as those alleged in the Commission's order instituting proceedings.

(c) *Payment to the United States Treasury Under Certain Circumstances.* When, in the opinion of the Commission or the hearing officer, the cost of administering a plan of disgorgement relative to the value of the available disgorgement funds and the number of potential claimants would not justify distribution of the disgorgement funds to injured investors, the plan may provide that the funds shall be paid directly to the general fund of the United States Treasury.

Comment (b): To minimize the costs of administering a plan of disgorgement, the Commission has in certain civil injunctive proceedings consented to the payment of disgorgement funds obtained as the result of a Commission initiated proceeding into a fund established for the benefit of persons in a related private civil action. *See, e.g., SEC v. Levin,* No. 3–92CV–399D (N.D. Tex. Mar. 2, 1992) (settlement directed payment into court registry); *SEC v. Boesky,* No. 86–CIV–2299, slip op. (S.D.N.Y. Nov. 14, 1986) (settlement directed payment to escrow agent). Rule 611 provides for a similar disposition of disgorgement funds obtained in an administrative proceeding. Transfer of disgorgement funds into a fund established in a judicial proceeding may be subject to conditions on the use of the funds. For example, the Commission has routinely prohibited the use of any funds obtained in a Commission initiated action to pay attorneys' fees in a private lawsuit.

Comment (c): The Commission has the authority to provide for the return of ill-gotten gains to investors, but there is no requirement that it do so. *See, e.g.,* Exchange Act §§ 21B(e) and 21C(e), 15 U.S.C. §§ 78u-2(e) and 78u-3(e) (''[t]he Commission is authorized to adopt rules, regulations, and orders * * * concerning payments to investors''). Returning funds to the United States Treasury when the expense of locating or making distributions to injured investors is prohibitive is consistent with treatment by the courts in similar situations. *SEC v. Marcus Schloss & Co.,* 714 F. Supp. 100 (S.D.N.Y. 1989); *SEC* v. *Courtois,* [1984–85 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 92,000 (S.D.N.Y. 1985); *SEC v. Lund,* 570 F. Supp. 1397, 1404–1405 (C.D. Cal. 1983).

Revision Comment (b): The respondent named in a Commission action may have settled a related civil action brought by private parties or may not have been named in a related private party litigation. The rule has been revised to permit the payment of disgorged funds to a fund established in connection with a judicial proceeding against the respondent or against any other person based upon a complaint alleging violations arising from the same or substantially similar facts as those alleged in the Commission's order instituting proceedings.

Rule 612. Notice of Proposed Plan of Disgorgement and Opportunity for Comment by Non-Parties

Notice of a proposed plan of disgorgement shall be published in the *SEC News Digest,* in the *SEC Docket,* and in such other publications as the Commission or the hearing officer may require. The notice shall specify how copies of the proposed plan may be obtained and shall state that persons desiring to comment on the proposed plan may submit their views, in writing, to the Commission.

Comment: Publication of notice that a proposed plan has been submitted is required in order to provide potential claimants or other persons with an opportunity to make known their views prior to adoption of the plan.

Rule 613. Order Approving, Modifying or Disapproving Proposed Plan of Disgorgement

At any time more than 30 days after publication of notice of a proposed plan of disgorgement, the hearing officer or the Commission shall, by order, approve, approve with modifications, or disapprove the proposed plan. In the discretion of the Commission or the hearing officer, a proposed plan of disgorgement that is substantially modified prior to adoption may be republished for an additional comment period pursuant to Rule 612. The order approving or disapproving the plan should be entered within 30 days after the end of the final period allowed for comments on the proposed plan unless the Commission or the hearing officer, by written order, allows a longer period for good cause shown.

Comment: After submission of comments, if any, the plan should be promptly approved, approved as modified or disapproved. The Commission or the hearing officer may hold a hearing on the proposed plan or may rule on the plan based only on written submissions, if any.

Rule 614. Administration of Plan of Disgorgement

(a) *Appointment and Removal of Administrator.* The Commission or the hearing officer shall have discretion to appoint any person, including a Commission employee, as administrator of a plan of disgorgement and to delegate to that person responsibility for administering the plan. A respondent may be required or permitted to administer or assist in administering a plan of disgorgement, subject to such terms and conditions as the Commission or the hearing officer deem appropriate to ensure the proper distribution of funds. An administrator may be removed at any time by order of the Commission or hearing officer.

(b) *Administrator to Post Bond.* If the administrator is not a Commission employee, the administrator shall be required to obtain a bond in the manner prescribed by 11 U.S.C. 322, in an amount to be approved by the Commission. The cost of the bond may be paid for as a cost of administration. The Commission may waive posting of a bond for good cause shown.

(c) *Administrator's Fees.* If the administrator is a Commission employee, no fee shall be paid to the administrator for his or her services. If the administrator is not a Commission employee, he or she may file an application for fees for completed services, and upon approval by the Commission or a hearing officer, may be paid a reasonable fee for those services. Any objections thereto shall be filed within 21 days of service of the application on the parties.

(d) *Source of Funds.* Unless otherwise ordered, fees and other expenses of administering the plan of disgorgement shall be paid first from the interest earned on disgorged funds, and if the interest is not sufficient, then from the corpus.

(e) *Accountings.* During the first 10 days of each calendar quarter, or as otherwise directed by the Commission or the hearing officer, the administrator shall file an accounting of all monies earned or received and all monies spent in connection with the administration of the plan of disgorgement. A final accounting shall be submitted for approval of the Commission or hearing officer prior to discharge of the administrator and cancellation of the administrator's bond, if any.

(f) *Amendment.* A plan may be amended upon motion by any party or the plan administrator or upon the Commission's or hearing officer's own motion.

Comment (a): In some circumstances, for example, where the number of potential claimants to a fund is small and the identity of the claimants is known in advance, the plan of disgorgement may be relatively uncomplicated and may not require extensive resources to administer. In such a case, an administrative law judge or a staff member may administer the plan of disgorgement most effectively.

As in court actions, however, if the amount of disgorgement is large or there are many potential claimants, administration of a disgorgement plan may involve extensive time and resources and may be accomplished most effectively by selecting an administrator with expertise in handling disgorgement-type proceedings. Such a person would, as necessary, be able to retain an accounting firm, a law firm, or any other entity necessary to assist in the administration of the disgorgement plan.

Rule 614 does not specify a method for selecting an administrator. In court proceedings, the Commission may have an advisory role in recommending individuals to the court as possible administrators, but the court itself must select and appoint the administrator. In administrative proceedings, however, the Commission itself is responsible for appointing the administrator. Selection of an administrator by the Commission may be subject to various statutory provisions or regulations regarding personnel matters, procurement and contract requirements, or other matters. In addition, the selection process should promote public confidence that the selection was made on an impartial basis.

In some proceedings, particularly those in which a settlement has been reached, the respondent may be required or allowed to assist in administering a disgorgement plan. *See, e.g., In the Matter of Donaldson, Lufkin & Jenrette Sec. Corp.*, Exchange Act Release No. 27889 (Apr. 11, 1990), 45 SEC Docket 1826, 1834 (Apr. 24, 1990). Especially in such self-administered disgorgement plans, the Commission may require affidavits, an accountant's certification, or other safeguards to assure that funds have been distributed only in accordance with the plan.

Comment (b): Funds or other assets paid as disgorgement will be placed into an escrow, custodial or similar account established by the Commission or with the Commission's approval for the purpose of holding such funds or assets until they are disbursed. No funds will be transferred to the Commission itself. *See* 31 U.S.C. § 3302(b) (requiring agencies receiving funds for the government to deposit the money into the Treasury without deduction for any charge or claim).

Funds paid pursuant to a disgorgement order do not become the property of the Commission and internal control and audit procedures mandated by statute for the Commission's own funds are not applicable to disgorgement funds. Rule 614(b) requires, therefore, that if the administrator is not a Commission employee, the administrator must obtain a surety bond comparable to that when a trustee is appointed in a SIPC liquidation or bankruptcy proceeding. *See* 15 U.S.C. § 78eee(b)(3); 11 U.S.C. § 322. See also Rule 614(e) (quarterly accountings required).

Comment (c): If the administrator is not a Commission employee, reasonable fees may be paid to the administrator. Payment of the administrator's fees may be made only upon a public application filed by the administrator and subject to the approval of the Commission or a hearing officer. Filings by the administrator, including fee applications, should conform to the filing requirements of Rule 151 and be served on all parties pursuant to Rule 150.

Comment (d): The Commission has broad authority to adopt rules, regulations and orders it deems appropriate to implement its authority to order disgorgement. *See, e.g.*, Exchange Act § 21B(e), 15 U.S.C. § 78u–2(e). Paragraph (d) provides that fees and expenses be paid first out of interest earned on disgorged funds, and if the interest is insufficient, then out of the corpus of the funds. Subject to any applicable requirements established by Congress with respect to the use of appropriated funds, and except to the extent a Commission employee is appointed administrator, or an administrative law judge administers a disgorgement fund without the assistance of an administrator, appropriated funds ordinarily will not be used to defray the direct costs of administering a disgorgement plan. Where the value of the available disgorgement funds relative to the expense of administrating a plan of disgorgement from the corpus or the interest earned would not justify distribution of funds, the disgorged funds may be turned over to the general fund of the United States Treasury. *See* Rule 611(c).

Comment (f): After a plan is approved, changed circumstances may require amendment of the plan. A plan may be amended upon motion by any party or the plan administrator or upon the Commission's or hearing officer's own motion. Procedures for publication of notice or hearing on the motion will be subject to case by case determination.

Rule 620. Right to Challenge Order of Disgorgement

Other than in connection with the opportunity to submit comments as provided in Rule 612, no person shall be granted leave to intervene or to participate in a proceeding or otherwise to appear to challenge an order of disgorgement; or an order approving, approving with modifications, or disapproving a plan of disgorgement; or any determination relating to a plan of disgorgement based solely upon that person's eligibility or potential eligibility to participate in a disgorgement fund or based upon any private right of action such person may have against any person who is also a respondent in an enforcement proceeding.

Comment: The opportunity to submit comments on a plan of disgorgement does not give a person any right to become a party to or intervene in an enforcement proceeding. *See* Rule 210 (no one may become a party or receive leave to intervene in an enforcement proceeding).

Although return of ill-gotten gains to injured investors is often an appropriate disposition of disgorged funds, the purpose of the Commission's administrative disgorgement remedy is to deprive violators of ill-gotten gains and thus serve as a deterrent to violations, rather than to compensate injured investors. *See* The Securities Law Enforcement Remedies and Penny Stock Reform Act of 1990, S. Rep. No. 337, 101st Cong., 2d Sess. 16 (1990) (''In contrast to an award of damages in a private action, which is designed to compensate an injured plaintiff, disgorgement forces a defendant to give up the amount by which he was unjustly enriched.''). The statutory remedy is consistent in this regard with the equitable remedy available in civil injunctive actions brought by the Commission. *See, e.g., SEC v. First City Financial Corp.*, 890 F.2d 1215, 1230, 1232 n.24 (D.C. Cir. 1989) (the primary purpose of disgorgement is not to compensate investors); *SEC v. Tome*, 833 F.2d 1086, 1096 (2d Cir. 1987), *cert.* denied, 486 U.S. 1014 (1988); *SEC v. Texas Gulf Sulphur Co.*, 446 F.2d 1301, 1307 (2d Cir.), *cert. denied*, 404 U.S. 1005 (1971); Securities Law Enforcement Remedies and Penny Stock Reform Act of 1990, H.R. Rep. No. 616, 101st Cong., 2d Sess. at 22 (1990).

Where it is not practical to locate persons who have been harmed, disgorgement in injunctive actions has been ordered paid into the general fund of the U.S. Treasury. *See SEC* v. *Marcus Schloss & Co.*, 714 F. Supp. 100, 103 (S.D.N.Y. 1989); *SEC v. Courtois*, [1984–85 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 92,000, at 90,959 (S.D.N.Y. 1985); *SEC v. Lund*, 570 F. Supp. 1397, 1404–1405 (C.D. Cal. 1983). In insider trading cases, courts have required that disgorgement be made available to persons other than investors. *See SEC v. Materia*, [1983–84 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 99,583, at 97,284–85 (S.D.N.Y. 1983), *aff'd on other grounds*, 745 F.2d 197 (2d Cir. 1984), *cert. denied*, 471 U.S. 1053 (1985). *See generally* Louis Loss, *Fundamentals of Securities Regulation* 1007 (2d ed. 1988) (discussing discretion exercised by courts in designating recipients of disgorged funds).

Since there is not a requirement that funds obtained in an administrative enforcement proceeding be paid to

investors, persons who may have a private right of action in federal court against a respondent do not thereby have standing in the Commission's enforcement proceeding against that respondent to challenge a plan of disgorgement solely because of dissatisfaction with their potential eligibility to receive funds from the Commission's disgorgement pool. *See Marino v. Ortiz,* 484 U.S. 301, 304 (1988) (per curiam) (explicitly disapproving of the suggestion in *SEC v. Certain Unknown Purchasers,* 817 F.2d 1018, 1021 & n.1 (2d Cir. 1987), *cert. denied,* 484 U.S. 1060 (1988), that a person has standing to appeal whenever he ''has an interest that is affected by the trial court's judgment.'').

The limitations in Rule 620 on participation in the proceedings before a hearing by a person with potential claims against the disgorgement pool does not preclude a person who is aggrieved by a decision concerning the disposition of disgorgement assets and entitled to review of the decision from petition the Commission for such review. A person aggrieved by a final decision of the Commission who is entitled to review may also seek a stay of the Commission order or judicial review of the order. *See* Rules 360, 401 and 410; Section 702 of the Administrative Procedure Act, 5 U.S.C. § 702. *See also SEC v. Wozniak,* 33 F.3d 13 (7th Cir. 1994) (persons not parties to the litigation who objected to a disgorgement plan could have sought a stay of district court's judgment and distribution of the plan in order to have standing to appeal).

Rule 630. Inability to Pay Disgorgement, Interest or Penalties

(a) *Generally.* In any proceeding in which an order requiring payment of disgorgement, interest or penalties may be entered, a respondent may present evidence of an inability to pay disgorgement, interest or a penalty. The Commission may, in its discretion, or the hearing officer may, in his or her discretion, consider evidence concerning ability to pay in determining whether disgorgement, interest or a penalty is in the public interest.

(b) *Financial Disclosure Statement.* Any respondent who asserts an inability to pay disgorgement, interest or penalties may be required to file a sworn financial disclosure statement and to keep the statement current. The financial statement shall show the respondent's assets, liabilities, income or other funds received and expenses or other payments, from the date of the first violation alleged against that respondent in the order instituting proceedings, or such later date as specified by the Commission or a hearing officer, to the date of the order requiring the disclosure statement to be filed. By order, the Commission or the hearing officer may prescribe the use of the Disclosure of Assets and Financial Information Form (*see* Form D–A at § 209.1 of this chapter) or any other form, may specify other time periods for which disclosure is required, and may require such other information as deemed necessary to evaluate a claim of inability to pay.

(c) *Confidentiality.* Any respondent submitting financial information pursuant to this rule or Rule 410(c) may make a motion, pursuant to Rule 322, for the issuance of a protective order against disclosure of the information submitted to the public or to any parties other than the Division of Enforcement. Prior to a ruling on the motion, no party receiving information as to which a motion for a protective order has been made may transfer or convey the information to any other person without the prior permission of the Commission or the hearing officer.

(d) *Service Required.* Notwithstanding any provision of Rule 322, a copy of the financial disclosure statement shall be served on the Division of Enforcement.

(e) *Failure to File Required Financial Information: Sanction.* Any respondent who, after making a claim of inability to pay either disgorgement, interest or a penalty, fails to file a financial disclosure statement when such a filing has been ordered or is required by rule may, in the discretion of the Commission or the hearing officer, be deemed to have waived the claim of inability to pay. No sanction pursuant to Rules 155 or 180 shall be imposed for a failure to file such a statement.

Comment (a): A respondent may present evidence of ability to pay a penalty, and the Commission may, in its discretion, consider such evidence. *See, e.g.,* Exchange Act § 21B(d), 15 U.S.C. § 78u–2(d). A respondent's ability to pay becomes a significant issue not only in proceedings in which a penalty is ordered, but also when disgorgement and interest is ordered. Although no statutory requirement addresses inability to pay disgorgement or interest, the Commission considers evidence of ability to pay as a factor in determining whether a respondent should be required to pay disgorgement and interest as well as penalties. Rule 630 codifies this practice.

Comment (b): A respondent may not be entirely candid about his or her financial position when asserting an inability to pay disgorgement, interest or penalties. The Commission or a hearing officer may require persons who assert an inability to pay disgorgement, interest or penalties to file sworn, verifiable financial disclosure statements before consideration of inability to pay as a basis for waiving disgorgement, interest or penalties.

Rule 630 provides that the Commission or the hearing officer may require ''such other information as deemed necessary to evaluate a claim of inability to pay.'' Accordingly, the Division of Enforcement may seek an order to question the respondent under oath or may seek the issuance of subpoenas to obtain documents or testimony concerning an asserted inability to pay. In addition, the rule provides that, by order, the Commission or the hearing officer may prescribe a particular financial disclosure form to be used and may specify time periods for which disclosure is required. Form D–A, the Disclosure of Assets and Financial Information Form, includes a waiver by the respondent that authorizes ''The Securities and Exchange Commission and any of its staff * * * to obtain any such information from credit bureaus, financial institutions or any other source as may be needed to verify the statements made on this form.'' If such a waiver is obtained, the Division of Enforcement may rely on it as a basis to seek confirmation of information in the financial disclosure form without further approval from the hearing officer or Commission.

Comment (c): The public's right to review financial disclosure statements submitted in connection with a respondent's claim of inability to pay should be balanced against the respondent's legitimate interest in protecting confidential or personal information from premature or unnecessary disclosure. Each request for confidentiality must be decided based on the procedural status of the case, the extent to which financial information has already been disclosed, and the individual facts and circumstances underlying the request.

While financial circumstances may change during the course of a proceeding, a respondent who intends to assert a claim of inability to pay may be required by the hearing officer to specify in connection with prehearing submissions or conferences whether the issue will be raised. Early submission of a financial disclosure form to support a planned claim of inability to pay will allow the hearing officer and parties to better prepare for hearing and to assess the time needed for the hearing. Part I of Form D–A requires only summary information as to which confidentiality

interests are limited. Part II requires detailed back-up information that is more likely to call for personal, confidential data, such as bank account numbers and information about regular medical payments. The earlier in a proceeding the respondent is required to submit financial information, however, the more compelling the case for the confidentiality of personal financial information such as that called for in Part II of Form D–A. Providing for confidential treatment of personal financial information at the early stages of a proceeding or prior to the respondent's own introduction of evidence of inability to pay protects a respondent's privacy interests to the maximum extent in the event that the Division fails in its case in chief or that the case settles prior to completion of the hearing.

Comment (d): A copy of the financial disclosure statement must be served on the Division of Enforcement notwithstanding any motion for a protective order. The Division of Enforcement must have the respondent's financial information in order to determine whether to challenge a claim of inability to pay. Notice that a disclosure statement has been filed must also be provided to other respondents, who may seek all or part of the information submitted unless a protective order has been sought or granted pursuant to Rule 322.

Form

209.1. Form D–A: Disclosure of Assets and Financial Information

(a) Rules 410 and 630 of the Rules of Practice (17 CFR 201.410 and 630 of this chapter) provide that under certain circumstances a respondent who asserts or intends to assert an inability to pay disgorgement, interest or penalties may be required to disclose certain financial information. Unless otherwise ordered, this form may be used by individuals required to supply such information.

(b) The respondent filing Form D–A is required promptly to notify the Commission of any material change in the answer to any question on this form.

(c) Form D–A may not be withheld from the Division of Enforcement. A respondent making financial information disclosures on this form after the institution of proceedings may make a motion, pursuant to Rule 322 of the Commission's Rules of Practice (17 CFR 201.322 of this chapter), for the issuance of a protective order to limit disclosure of the information submitted on Form D–A to the public or parties other than the Division of Enforcement. A request for a protective order allows the requester an opportunity to justify the need for confidentiality. The making of a motion for a protective order does not, however, guarantee that disclosure will be limited.

(d) No party receiving information for which a motion for a protective order has been made may transfer or convey the information to any other person prior to a ruling on the motion without the prior permission of the Commission or a hearing officer.

(e) A person making financial information disclosures on Form D–A prior to the institution of proceedings, in connection with an offer of settlement or otherwise, may request confidential treatment of the information pursuant to the Freedom of Information Act. *See* the Commission's Freedom of Information Act (''FOIA'') regulations, 17 CFR 200.83. A request for confidential treatment allows the requester an opportunity to substantiate the need for confidentiality. No determination as to the validity of any request for confidential treatment will be made until a request for disclosure of the information under FOIA is received.

Note: Form D–A appears in the appendix to this document.

V. Regulatory Flexibility Analysis

The initial Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 603 and published in the Proposing Release. No comments were received on this analysis. The Commission has prepared a Final Regulatory Flexibility Analysis, a copy of which may be obtained by writing to Andrew Glickman, Esq., Office of the General Counsel, Mail Stop 6–6, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549.

VI. Statutory Basis For Rules

These amendments to the Rules of Practice and related rules are being adopted pursuant to: 15 U.S.C. 77f, 77g, 77h, 77h–1, 77j, 77s, 77u, 78c(b), 78d–1, 78d–2, 78*l*, 78m, 78n, 78*o*(d), 78*o*–3, 78s, 78u–2, 78u–3, 78v, 78w, 79c, 79s, 79t, 79z–5a, 77sss, 77ttt, 80a–8, 80a–9, 80a–37, 80a–38, 80a–39, 80a–40, 80a–41, 80a–44, 80b–3, 80b–9, 80b–11, and 80b–12.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies), Securities.

17 CFR Part 201

Accountants, Administrative practice and procedure, Brokers, Claims, Confidential business information, Equal access to justice, Fraud, Lawyers, Penalties, Securities.

17 CFR Part 202

Administrative practice and procedure.

17 CFR Part 203

Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

17 CFR Part 209

Administrative practice and procedure—financial disclosure form.

17 CFR Part 228

Reporting and recordkeeping requirements, Securities.

17 CFR Part 229

Reporting and recordkeeping requirements, Securities.

17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

17 CFR Part 232

Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Accountants, Administrative practice and procedure, Brokers, Lawyers, Penalties, Reporting and recordkeeping requirements, Securities.

17 CFR Part 250

Reporting and recordkeeping requirements, Securities.

17 CFR Part 260

Reporting and recordkeeping requirements, Securities.

17 CFR Part 270

Reporting and recordkeeping requirements, Securities.

17 CFR Part 275

Reporting and recordkeeping requirements, Securities.

Text of Adopted Rules

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

1. The authority citation for part 200, subpart A, continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 79t, 79sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.1(j) is revised to read as follows:

§ 200.1 General statement and statutory authority.

* * * * *

(j) Administrative sanctions, injunctive remedies, civil money penalties and criminal prosecution. There are also private rights of action for investors injured by violations of the Acts.

§ 200.16 [Amended]

3. In § 200.16, remove the words ''Rule 2(e) of the Commission's Rules of Practice (§ 201.2(e) of this chapter)'', and, in their place, add the words ''Rule 102(e) of the Commission's Rules of Practice (§ 201.102(e) of this chapter)''.

§ 200.30–4 [Amended]

4. In § 200.30–4(a)(5), remove the words ''Rule 29 of the Commission's Rules of Practice (17 CFR 201.1–201.29)'', and, in their place, add the words ''Rule 193 of the Commission's Rules of Practice, § 201.193 of this chapter''.

§ 200.30–7 [Amended]

5. In § 200.30–7(a)(1), remove the words ''Rule 21(a) of the Commission's rules of practice, § 201.21(a)'', and, in their place, add the words ''Rule 451 of the Commission's Rules of Practice, § 201.451''.

6. In § 200.30–7(a)(2), remove the words ''Rule 21(b) of the Commission's rules of practice, § 201.21(b)'', and, in their place, add the words ''Rule 451(c) of the Commissions Rules of Practice, § 201.451(c)''.

7. In § 200.30–7 (a)(3) and (a)(4), remove the words ''Rule 13 of the Commission's rules of practice, § 201.13'', and, in their place, add the words ''Rule 161 of the Commission's Rules of Practice, § 201.161'' .

8. In § 200.30–7(a)(5), remove the words ''Rule 22(d) of the Commission's rules of practice, § 201.22(d)'', and, in their place, add the words ''Rule 450(c) of the Commission's Rules of Practice, § 201.450(c)''.

9. In § 200.30–7(a)(9), remove the words ''rules 6 and 23 of the Commission's rules of practice'', and, in their place, add the words ''Rules 141 and 150 of the Commission's Rules of Practice, §§ 201.141 and 201.150 of this chapter''.

10. In § 200.30–7 paragraph (a)(10) is added to read as follows: § 200.30–7 Delegation of Authority to Secretary of the Commission.

(a) * * *

(10) To set the date for sanctions to take effect if an initial decision is not appealed and becomes final pursuant to Rule 360(d) or if an initial decision is affirmed pursuant to Rule 411.

* * * * *

11. Section 200.30–9 is revised to read as follows:

§ 200.30–9 Delegation of authority to hearing officers.

Pursuant to the provisions of Section 4A of the Securities Exchange Act of 1934 (15 U.S.C. 78d-1), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, to each Administrative Law Judge (''Judge'') the authority:

(a) To make an initial decision in any proceeding at which the Judge presides in which a hearing is required to be conducted in conformity with the Administrative Procedure Act (5 U.S.C. 557) unless such initial decision is waived by all parties who appear at the hearing and the Commission does not subsequently order that an initial decision nevertheless be made by the Judge, and in any other proceeding in which the Commission directs the Judge to make such a decision; and

(b) To issue, upon entry pursuant to Rule 531 of the Commission's Rules of Practice, § 201.531 of this chapter, of an initial decision on a permanent order, a separate order setting aside, limiting or suspending any temporary sanction, as that term is defined in Rule 101(a)(11) of the Commission's Rules of Practice, § 201.101(a) of this chapter, then in effect in accordance with the terms of the initial decision.

§ 200.30–10 [Amended]

12. In § 200.30–10(a)(1), remove the words ''Rule 6(b) of the Commission's rules of practice, § 201.6(b) of this chapter, and Rule 11(a) of the Commission's rules of practice (§ 201.11(a) of this chapter)'', and, in their place, add the words ''Rule 200 of the Commission's Rules of Practice, § 201.200 of this chapter''.

13. In § 200.30–10(a)(2), remove the words ''Rule 11(b) of the Commission's rules of practice (§ 201.11(b) of this chapter)'', and, in their place, add the words ''Rule 110 of the Commission's Rules of Practice, § 201.110 of this chapter''.

14. In § 200.30–10(a)(3), remove the words ''Rule 13 of the Commission's rules of practice, § 201.13'', and, in their place, add the words ''Rule 161 of the Commission's Rules of Practice, § 201.161''.

15. In § 200.30–10(a)(4), remove the words ''Rule 13 of the Commission's rules of practice (§ 201.13 of this chapter)'', and, in their place, add the words ''Rule 161 of the Commission's Rules of Practice, § 201.161 of this chapter''.

16. In § 200.30–10(a)(5), remove the words ''Rule 22(d) of the Commission's rules of practice (§ 201.22(d) of this chapter)'', and, in their place, add the words ''Rule 450(c) of the Commission's Rules of Practice, § 201.450(c) of this chapter''.

17. In § 200.30–10 paragraph (a)(6) is removed and paragraphs (a)(7) and (a)(8) are redesignated as paragraphs (a)(6) and (a)(7).

18. In newly redesignated § 200.30–10(a)(6), remove the words ''Rule 14(b) of the Commission's rules of practice (201.14(b) of this chapter)'', and, in their place, add the words ''Rule 232 of the Commission's Rules of Practice, § 201.232 of this chapter''.

19. Section 200.30–14 is amended by revising the introductory text of paragraph (g)(1), adding paragraphs (g)(1)(x) through (g)(1)(xiv), and revising paragraphs (g)(2), and (g)(4) through (g)(7) to read as follows:

§ 200.30–14 Delegation of authority to the General Counsel.

* * * * *

(g)(1) With respect to proceedings conducted pursuant to the Securities Act of 1933 (15 U.S.C. 77a, *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*), the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a, *et seq.*), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa, *et seq.*), the Investment Company Act of 1940 (15 U.S.C. 80a–1, *et seq.*), the Investment Advisers Act of 1940 (15 U.S.C. 80b–1, *et seq.*),the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa, *et seq.*) and the provisions of Rule 102(e) of the Commission's Rules of Practice (§ 201.102(e) of this chapter);

* * * * *

(x) To determine motions to consolidate proceedings pending before the Commission.

(xi) To determine whether to permit or require that a record of proceedings be supplemented with additional evidence.

(xii) To determine requests for leave to file an opposition to a petition for review filed pursuant to the provisions of Rule 411 of the Commission's Rules of Practice, § 201.411 of this chapter.

(xiii) To issue a briefing schedule order pursuant to Rule 450 of the Commission's Rules of Practice, § 201.450 of this chapter.

(xiv) To determine motions for expedited briefing schedules.

(2) With respect to proceedings conducted pursuant to the Securities Act of 1933 (15 U.S.C. 77a, *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*), the Investment Company Act of 1940 (15 U.S.C. 80a–1, *et seq.*), the Investment Advisers Act of 1940 (15 U.S.C. 80b–1, *et seq.*), the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa, *et seq.*) and the provisions of Rule 102(e) of the Commission's Rules of Practice (§ 201.102(e) of this chapter), to issue findings and orders taking the remedial action described in the order for proceedings where the respondents expressly consent to such action, fail to appear or default in the filing of answers required to be filed; or to grant a request, based upon a showing of good cause, to vacate an order of default, so as to permit presentation of a defense.

* * * * *

(4) With respect to proceedings under Sections 19 (d), (e) and (f) of the Securities Exchange Act of 1934 (15 U.S.C. 78s (d), (e) and (f)), to determine that an application for review under those sections has been abandoned, under the provisions of Rule 420, § 201.420 of this chapter, or otherwise, and to issue an order dismissing the application in such event.

(5) With respect to proceedings conducted or reviewed pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*), the Investment Company Act of 1940 (15 U.S.C. 80a–1, *et seq.*), the Investment Advisers Act of 1940 (15 U.S.C. 80b–1, *et seq.*) and the provisions of Rule 102(e) of the Commission's Rules of Practice, § 201.102(e) of this chapter, to determine applications to stay Commission orders pending appeal of those orders to the federal courts and to determine applications to vacate such stays.

(6) With respect to review proceedings pursuant to Sections 19 (d), (e), and (f) of the Securities Exchange Act of 1934 (15 U.S.C. 78s (d), (e), and (f)), to determine applications for a stay of action taken by a self-regulatory organization pending Commission review of that action and to determine applications to vacate such stays.

(7) In connection with Commission review of actions taken by self-regulatory organizations, pursuant to Sections 19 (d), (e) and (f) of the Securities Exchange Act of 1934 (15 U.S.C. 78s (d), (e) and (f)), to grant or deny requests for oral argument in accordance with the provisions of Rule 451, § 201.451 of this chapter.

* * * * *

Subpart B—Disposition of Commission Business

20. The authority citation for part 200, subpart B continues to read as follows:

Authority: 5 U.S.C. 522b.

21. Section 200.43 is amended by adding ‘‘, except that the duty officer may preside at the taking of evidence with respect to the issuance of a temporary cease-and-desist order as provided by Rule 511(c) of the Commission's Rules of Practice, § 201.511(c) of this chapter.’’ before the period.

Subpart F—Code of Behavior Governing Ex Parte Communications Between Persons Outside the Commission and Decisional Employees

22. The authority citation for part 200, subpart F is revised to read as follows:

Authority: 15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11; 5 U.S.C. 557.

§ 200.111 [Amended]

23. In § 200.111(d)(1)(i), remove the words ‘‘Rule 23 of the Commission's Rules of Practice, § 201.23’’, and, in their place, add the words ‘‘Rule 150 of the Commission's Rules of Practice, § 201.150’’.

24. In § 200.111(d)(2), remove the words ‘‘Rule 9(c) of the Commission's Rules of Practice, § 201.9(c)’’, and, in their place, add the words ‘‘ Rule 210(c) of the Commission's Rules of Practice, § 201.210(c)’’.

Subpart H—Regulations Pertaining to the Privacy of Individuals and Systems of Records Maintained by the Commission

25. The general authority citation for part 200, subpart H is revised to read as follows:

Authority: 5 U.S.C. 552a(f), unless otherwise noted.

* * * * *

§ 200.312 [Amended]

26. In § 200.312(a)(8), remove the words ‘‘Rule 2(e)’’, and, in their place, add the words ‘‘Rule 102(e)’’.

Subpart K—Regulations Pertaining to the Protection of the Environment

27. The authority citation for part 200, subpart K is revised to read as follows:

Authority: 15 U.S.C. 78w(a)(2).

§ 200.554 [Amended]

28. In § 200.554(a), remove the words ‘‘§ 201.20’’, and, in their place, add the words ‘‘Rule 460 of the Commission's Rules of Practice, § 201.460’’.

Subpart M—Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission

29. The authority citation for part 200, subpart M continues to read as follows:

Authority: 15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11; E. O. 11222; 3 CFR, 1964–1965 Comp.; 5 CFR 735.104 unless otherwise noted.

§ 200.735–13 [Amended]

30. In § 200.735–13(c), remove the words ‘‘Rule 2(e) of the Commission's Rules of Practice, 17 CFR 201.2(e)’’, and ‘‘17 CFR 201.1’’ and, in their place, add the words ‘‘Rule 102(e) of the Commission's Rules of Practice, § 201.102(e) of this chapter’’ and ‘‘17 CFR 201.100’’.

PART 201—RULES OF PRACTICE

31. The authority citation for Part 201 is removed.

Subpart A—[Removed and Reserved]

32. Subpart A is removed and reserved.

Subpart B—Regulations Pertaining to the Equal Access to Justice Act

33. The authority citation for Subpart B of Part 201 is revised to read as follows:

Authority: 15 U.S.C. 77s, 78w, 78x, 79t, 77sss, 80a–37 and 80b–11; 5 U.S.C. 504(c)(1).

34. In § 201.42: the reference to ‘‘201.25’’ in paragraph (b) is corrected to read ‘‘201.190’’.

35. In § 201.54: the reference to ‘‘201.8’’ is corrected to read ‘‘201.240’’.

36. In § 201.57: the reference to ‘‘201.17’’ is corrected to read ‘‘201.410 and 201.411’’.

37. Section 201.60 is removed and reserved.

Subpart C—Procedures Pertaining to the Payment of Bounties Pursuant to Subsection 21A(e) of the Securities Exchange Act of 1934

38. The authority citation for Subpart C of Part 201 is revised to read as follows:

Authority: 15 U.S.C. 78u–1 and 78w.

39. Subpart D is added to read as follows:

Subpart D—Rules of Practice

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201.900 Informal Procedures and Supplementary Information Concerning Adjudicatory Proceedings.
Table I to Subpart D—Adversary Adjudications Conducted by the Commission under 5 U.S.C. 554
Table II to Subpart D—Cross-reference table showing location of Rules of Practice adopted in 1995 with former Rules of Practice, related rules and statutory provisions.
Table III to Subpart D—Cross-reference table showing location of former Rules of Practice and related rules with Rules of Practice adopted in 1995

Subpart D—Rules of Practice

Authority: 15 U.S.C. 77f, 77g, 77h, 77h-1, 77j, 77s, 77u, 78c(b), 78d-1, 78d-2, 78*l*, 78m, 78n, 78*o*(d), 78*o*-3, 78s, 78u-2, 78u-3, 78v, 78w, 79c, 79s, 79t, 79z-5a, 77sss, 77ttt, 80a-8, 80a-9, 80a-37, 80a-38, 80a-39, 80a-40, 80a-41, 80a-44, 80b-3, 80b-9, 80b-11, and 80b-12 unless otherwise noted.

General Rules

§ 201.100 Scope of the rules of practice.

(a) Unless provided otherwise, these Rules of Practice govern proceedings before the Commission under the statutes that it administers.

(b) These rules do not apply to:

(1) Investigations, except where made specifically applicable by the Rules Relating to Investigations, part 203 of this chapter; or

(2) Actions taken by the duty officer pursuant to delegated authority under 17 CFR 200.42.

§ 201.101 Definitions.

(a) For purposes of these Rules of Practice, unless explicitly stated to the contrary:

(1) *Commission* means the United States Securities and Exchange Commission, or a panel of Commissioners constituting a quorum of the Commission, or a single Commissioner acting as duty officer pursuant to 17 CFR 200.43;

(2) *Counsel* means any attorney representing a party or any other person representing a party pursuant to § 201.102(b);

(3) *Disciplinary proceeding* means an action pursuant to § 201.102(e);

(4) *Enforcement proceeding* means an action, initiated by an order instituting proceedings, held for the purpose of determining whether or not a person is about to violate, has violated, has caused a violation of, or has aided or abetted a violation of any statute or rule administered by the Commission, or whether to impose a sanction as defined in Section 551(10) of the Administrative Procedure Act, 5 U.S.C. 551(10);

(5) *Hearing officer* means an administrative law judge, a panel of Commissioners constituting less than a quorum of the Commission, an individual Commissioner, or any other person duly authorized to preside at a hearing;

(6) *Interested division* means a division or an office assigned primary responsibility by the Commission to participate in a particular proceeding;

(7) *Order instituting proceedings* means an order issued by the Commission commencing a proceeding or an order issued by the Commission to hold a hearing;

(8) *Party* means the interested division, any person named as a respondent in an order instituting proceedings, any applicant named in the caption of any order, persons entitled to notice in a stop order proceeding as set forth in § 201.200(a)(2) or any person seeking Commission review of a decision;

(9) *Proceeding* means any agency process initiated by an order instituting proceedings; or by the filing, pursuant to § 201.410, of a petition for review of an initial decision by a hearing officer; or by the filing, pursuant to § 201.420, of an application for review of a self-regulatory organization determination; or by the filing, pursuant to § 201.430, of a notice of intention to file a petition for review of a determination made pursuant to delegated authority;

(10) *Secretary* means the Secretary of the Commission; and

(11) *Temporary sanction* means a temporary cease-and-desist order or a temporary suspension of the registration of a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or transfer agent pending final determination whether the registration shall be revoked.

(b) [Reserved]

§ 201.102 Appearance and practice before the Commission.

A person shall not be represented before the Commission or a hearing officer except as stated in paragraphs (a) and (b) of this section or as otherwise permitted by the Commission or a hearing officer.

(a) *Representing oneself.* In any proceeding, an individual may appear on his or her own behalf.

(b) *Representing others.* In any proceeding, a person may be represented by an attorney at law admitted to practice before the Supreme Court of the United States or the highest court of any State (as defined in Section 3(a)(16) of the Exchange Act, 15 U.S.C. 78c(a)(16)); a member of a partnership may represent the partnership; a bona fide officer of a corporation, trust or association may represent the corporation, trust or association; and an officer or employee of a state commission or of a department or political subdivision of a state may represent the state commission or the department or political subdivision of the state.

(c) *Former Commission employees.* Former employees of the Commission must comply with the restrictions on practice contained in the Commission's Conduct Regulation, Subpart M, 17 CFR 200.735.

(d) *Designation of address for service; notice of appearance; power of attorney; withdrawal.* (1) *Representing oneself.* When an individual first makes any filing or otherwise appears on his or her own behalf before the Commission or a hearing officer in a proceeding as defined in § 201.101(a), he or she shall file with the Commission, or otherwise state on the record, and keep current, an address at which any notice or other written communication required to be served upon him or her or furnished to him or her may be sent and a telephone number where he or she may be reached during business hours.

(2) *Representing others.* When a person first makes any filing or otherwise appears in a representative capacity before the Commission or a hearing officer in a proceeding as defined in § 201.101(a), that person shall file with the Commission, and keep current, a written notice stating the name of the proceeding; the representative's name, business address and telephone number; and the name and address of the person or persons represented.

(3) *Power of attorney.* Any individual appearing or practicing before the Commission in a representative capacity may be required to file a power of attorney with the Commission showing his or her authority to act in such capacity.

(4) *Withdrawal.* Withdrawal by any individual appearing in a representative capacity shall be permitted only by order of the Commission or the hearing officer. A motion seeking leave to withdraw shall state with specificity the reasons for such withdrawal.

(e) *Suspension and disbarment.* (1) *Generally.* The Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission after notice and opportunity for hearing in the matter:

(i) Not to possess the requisite qualifications to represent others; or

(ii) To be lacking in character or integrity or to have engaged in unethical or improper professional conduct; or

(iii) To have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

(2) *Certain professionals and convicted persons.* Any attorney who has been suspended or disbarred by a court of the United States or of any State; or any person whose license to practice as an accountant, engineer, or other professional or expert has been revoked or suspended in any State; or any person who has been convicted of a felony or a misdemeanor involving moral turpitude shall be forthwith suspended from appearing or practicing before the Commission. A disbarment, suspension, revocation or conviction within the meaning of this section shall be deemed to have occurred when the disbarring, suspending, revoking or convicting agency or tribunal enters its judgment or order, including a judgment or order on a plea of nolo contendere, regardless of whether an appeal of such judgment or order is pending or could be taken.

(3) *Temporary suspensions.* An order of temporary suspension shall become effective upon service on the respondent. No order of temporary suspension shall be entered by the Commission pursuant to paragraph (e)(3)(i) of this section more than 90 days after the date on which the final judgment or order entered in a judicial or administrative proceeding described in paragraph (e)(3)(i)(A) or (e)(3)(i)(B) of this section has become effective, whether upon completion of review or appeal procedures or because further review or appeal procedures are no longer available.

(i) The Commission, with due regard to the public interest and without preliminary hearing, may, by order, temporarily suspend from appearing or practicing before it any attorney, accountant, engineer, or other professional or expert who has been by name:

(A) Permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder; or

(B) Found by any court of competent jurisdiction in an action brought by the Commission to which he or she is a party or found by the Commission in any administrative proceeding to which he or she is a party to have violated (unless the violation was found not to have been willful) or aided and abetted the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

(ii) Any person temporarily suspended from appearing and practicing before the Commission in accordance with paragraph (e)(3)(i) of this section may, within 30 days after service upon him or her of the order of temporary suspension, petition the Commission to lift the temporary suspension. If no petition has been received by the Commission within 30 days after service of the order, the suspension shall become permanent.

(iii) Within 30 days after the filing of a petition in accordance with paragraph (e)(3)(ii) of this section, the Commission shall either lift the temporary suspension, or set the matter down for hearing at a time and place designated by the Commission, or both, and, after opportunity for hearing, may censure the petitioner or disqualify the petitioner from appearing or practicing before the Commission for a period of time or permanently. In every case in which the temporary suspension has not been lifted, every hearing held and other action taken pursuant to this paragraph (e)(3) shall be expedited in accordance with § 201.500. If the hearing is held before a hearing officer, the time limits set forth in § 201.531 will govern review of the hearing officer's initial decision.

(iv) In any hearing held on a petition filed in accordance with paragraph (e)(3)(ii) of this section, the staff of the Commission shall show either that the petitioner has been enjoined as described in paragraph (e)(3)(i)(A) of this section or that the petitioner has been found to have committed or aided and abetted violations as described in paragraph (e)(3)(i)(B) of this section and that showing, without more, may be the basis for censure or disqualification. Once that showing has been made, the burden shall be upon the petitioner to show cause why he or she should not be censured or temporarily or permanently disqualified from appearing and practicing before the Commission. In any such hearing, the petitioner may not contest any finding made against him or her or fact admitted by him or her in the judicial or administrative proceeding upon which the proceeding under this paragraph (e)(3) is predicated. A person who has consented to the entry of a permanent injunction as described in paragraph (e)(3)(i)(A) of this section without admitting the facts set forth in the complaint shall be presumed for all purposes under this paragraph (e)(3) to have been enjoined by reason of the misconduct alleged in the complaint.

(4) *Filing of prior orders.* Any person appearing or practicing before the Commission who has been the subject of an order, judgment, decree, or finding as set forth in paragraph (e)(3) of this section shall promptly file with the Secretary a copy thereof (together with any related opinion or statement of the agency or tribunal involved). Failure to file any such paper, order, judgment, decree or finding shall not impair the operation of any other provision of this section.

(5) *Reinstatement.* (i) An application for reinstatement of a person permanently suspended or disqualified under paragraph (e)(1) or (e)(3) of this section may be made at any time, and the applicant may, in the Commission's discretion, be afforded a hearing; however, the suspension or disqualification shall continue unless and until the applicant has been reinstated by the Commission for good cause shown.

(ii) Any person suspended under paragraph (e)(2) of this section shall be reinstated by the Commission, upon appropriate application, if all the grounds for application of the provisions of that paragraph are subsequently removed by a reversal of the conviction or termination of the suspension, disbarment, or revocation. An application for reinstatement on any other grounds by any person suspended under paragraph (e)(2) of this section may be filed at any time and the applicant shall be accorded an opportunity for a hearing in the matter; however, such suspension shall continue unless and until the applicant has been reinstated by order of the Commission for good cause shown.

(6) *Other proceedings not precluded.* A proceeding brought under paragraph (e)(1), (e)(2) or (e)(3) of this section shall not preclude another proceeding brought under these same paragraphs.

(7) *Public hearings.* All hearings held under this paragraph (e) shall be public unless otherwise ordered by the Commission on its own motion or after considering the motion of a party.

(f) *Practice defined.* For the purposes of these Rules of Practice, practicing before the Commission shall include, but shall not be limited to:

(1) Transacting any business with the Commission; and

(2) The preparation of any statement, opinion or other paper by any attorney, accountant, engineer or other professional or expert, filed with the Commission in any registration statement, notification, application, report or other document with the consent of such attorney, accountant, engineer or other professional or expert.

§ 201.103 Construction of rules.

(a) The Rules of Practice shall be construed and administered to secure the just, speedy, and inexpensive determination of every proceeding.

(b) In any particular proceeding, to the extent that there is a conflict between these rules and a procedural requirement contained in any statute, or any rule or form adopted thereunder, the latter shall control.

(c) For purposes of these rules:

(1) Any term in the singular includes the plural, and any term in the plural includes the singular, if such use would be appropriate;

(2) Any use of a masculine, feminine, or neuter gender encompasses such other genders as would be appropriate; and

(3) Unless the context requires otherwise, counsel for a party may take any action required or permitted to be taken by such party.

§ 201.104 Business hours.

The Headquarters office of the Commission, at 450 Fifth Street, N.W., Washington, D.C. 20549, is open each

day, except Saturdays, Sundays, and Federal legal holidays, from 9 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect in Washington, D.C. Federal legal holidays consist of New Year's Day; Birthday of Martin Luther King, Jr.; Presidents Day; Memorial Day; Independence Day; Labor Day; Columbus Day; Veterans Day; Thanksgiving Day; Christmas Day; and any other day appointed as a holiday in Washington, D.C. by the President or the Congress of the United States.

§ 201.110 Presiding officer.

All proceedings shall be presided over by the Commission or, if the Commission so orders, by a hearing officer. When the Commission designates that the hearing officer shall be an administrative law judge, the Chief Administrative Law Judge shall select, pursuant to 17 CFR 200.30–10, the administrative law judge to preside.

§ 201.111 Hearing officer: authority.

The hearing officer shall have the authority to do all things necessary and appropriate to discharge his or her duties. No provision of these Rules of Practice shall be construed to limit the powers of the hearing officer provided by the Administrative Procedure Act, 5 U.S.C. 556, 557. The powers of the hearing officer include, but are not limited to, the following:

(a) Administering oaths and affirmations;

(b) Issuing subpoenas authorized by law and revoking, quashing, or modifying any such subpoena;

(c) Receiving relevant evidence and ruling upon the admission of evidence and offers of proof;

(d) Regulating the course of a proceeding and the conduct of the parties and their counsel;

(e) Holding prehearing and other conferences as set forth in § 201.221 and requiring the attendance at any such conference of at least one representative of each party who has authority to negotiate concerning the resolution of issues in controversy;

(f) Recusing himself or herself upon motion made by a party or upon his or her own motion;

(g) Ordering, in his or her discretion, in a proceeding involving more than one respondent, that the interested division indicate, on the record, at least one day prior to the presentation of any evidence, each respondent against whom that evidence will be offered;

(h) Subject to any limitations set forth elsewhere in these rules, considering and ruling upon all procedural and other motions;

(i) Preparing an initial decision as provided in § 201.360;

(j) Upon notice to all parties, reopening any hearing prior to the filing of an initial decision therein, or, if no initial decision is to be filed, prior to the time fixed for the filing of final briefs with the Commission; and

(k) Informing the parties as to the availability of one or more alternative means of dispute resolution, and encouraging the use of such methods.

§ 201.112 Hearing officer: disqualification and withdrawal.

(a) *Notice of disqualification.* At any time a hearing officer believes himself or herself to be disqualified from considering a matter, the hearing officer shall issue a notice stating that he or she is withdrawing from the matter and setting forth the reasons therefor.

(b) *Motion for withdrawal.* Any party who has a reasonable, good faith basis to believe that a hearing officer has a personal bias, or is otherwise disqualified from hearing a case, may make a motion to the hearing officer that the hearing officer withdraw. The motion shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification. If the hearing officer finds himself or herself not disqualified, he or she shall so rule and shall continue to preside over the proceeding.

§ 201.120 Ex parte communications.

(a) Except to the extent required for the disposition of *ex parte* matters as authorized by law, the person presiding over an evidentiary hearing may not:

(1) Consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or

(2) Be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for the Commission.

(b) The Commission's code of behavior regarding *ex parte* communications between persons outside the Commission and decisional employees, 17 CFR 200.110 through 200.114, governs other prohibited communications during a proceeding conducted under the Rules of Practice.

§ 201.121 Separation of functions.

Any Commission officer, employee or agent engaged in the performance of investigative or prosecutorial functions for the Commission in a proceeding as defined in § 201.101(a) may not, in that proceeding or one that is factually related, participate or advise in the decision, or in Commission review of the decision pursuant to Section 557 of the Administrative Procedure Act, 5 U.S.C. 557, except as a witness or counsel in the proceeding.

§ 201.140 Commission orders and decisions: signature and availability.

(a) *Signature required.* All orders and decisions of the Commission shall be signed by the Secretary or any other person duly authorized by the Commission.

(b) *Availability for inspection.* Each order and decision shall be available for inspection by the public from the date of entry, unless the order or decision is nonpublic. A nonpublic order or decision shall be available for inspection by any person entitled to inspect it from the date of entry.

(c) *Date of entry of orders.* The date of entry of a Commission order shall be the date the order is signed. Such date shall be reflected in the caption of the order, or if there is no caption, in the order itself.

§ 201.141 Orders and decisions: service of orders instituting proceeding and other orders and decisions.

(a) *Service of an order instituting proceedings.* (1) *By whom made.* The Secretary, or another duly authorized officer of the Commission, shall serve a copy of an order instituting proceedings on each person named in the order as a party. The Secretary may direct an interested division to assist in making service.

(2) *How made.* (i) *To individuals.* Notice of a proceeding shall be made to an individual by delivering a copy of the order instituting proceedings to the individual or to an agent authorized by appointment or by law to receive such notice. *Delivery* means—handing a copy of the order to the individual; or leaving a copy at the individual's office with a clerk or other person in charge thereof; or leaving a copy at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or sending a copy of the order addressed to the individual by U.S. Postal Service certified, registered or Express Mail and obtaining a confirmation of receipt; or giving confirmed telegraphic notice.

(ii) *To corporations or entities.* Notice of a proceeding shall be made to a person other than a natural person by delivering a copy of the order instituting proceedings to an officer, managing or general agent, or any other agent authorized by appointment or by law to receive such notice, by any method specified in paragraph (a)(2)(i) of this section.

(iii) *Upon persons registered with the Commission.* In addition to any other method of service specified in paragraph (a)(2) of this section, notice may be made to a person currently registered with the Commission as a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, investment company or transfer agent by sending a copy of the order addressed to the most recent business address shown on the person's registration form by U.S. Postal Service certified, registered or Express Mail and obtaining a confirmation of attempted delivery.

(iv) *Upon persons in a foreign country.* Notice of a proceeding to a person in a foreign country may be made by any method specified in paragraph (a)(2) of this section, or by any other method reasonably calculated to give notice, provided that the method of service used is not prohibited by the law of the foreign country.

(v) *In stop order proceedings.* Notwithstanding any other provision of paragraph (a)(2) of this section, in proceedings pursuant to Sections 8 or 10 of the Securities Act of 1933, 15 U.S.C. 77h or 77j, or Sections 305 or 307 of the Trust Indenture Act of 1939, 15 U.S.C. 77eee or 77ggg, notice of the institution of proceedings shall be made by personal service or confirmed telegraphic notice, or a waiver obtain pursuant to paragraph (a)(4) of this section.

(3) *Certificate of service.* The Secretary shall place in the record of the proceeding a certificate of service identifying the party given notice, the method of service, the date of service, the address to which service was made and the person who made service. If service is made in person, the certificate shall state, if available, the name of the individual to whom the order was given. If service is made by U.S. Postal Service certified, registered or Express Mail, the certificate shall be accompanied by a confirmation of receipt or of attempted delivery, as required. If service is made to an agent authorized by appointment to receive service, the certificate shall be accompanied by evidence of the appointment.

(4) *Waiver of service.* In lieu of service as set forth in paragraph (a)(2) of this section, the party may be provided a copy of the order instituting proceedings by first class mail or other reliable means if a waiver of service is obtained from the party and placed in the record.

(b) *Service of orders or decisions other than an order instituting proceedings.* Written orders or decisions issued by the Commission or by a hearing officer shall be served promptly on each party pursuant to any method of service authorized under paragraph (a) of this section or § 201.150(c). Service of orders or decisions by the Commission, including those entered pursuant to delegated authority, shall be made by the Secretary or, as authorized by the Secretary, by a member of an interested division. Service of orders or decisions issued by a hearing officer shall be made by the Secretary or the hearing officer.

§ 201.150 Service of papers by parties.

(a) *When required.* In every proceeding as defined in § 201.101(a), each paper, including each notice of appearance, written motion, brief, or other written communication, shall be served upon each party in the proceeding in accordance with the provisions of this section; provided, however, that absent an order to the contrary, no service shall be required for motions which may be heard *ex parte.*

(b) *Upon a person represented by counsel.* Whenever service is required to be made upon a person represented by counsel who has filed a notice of appearance pursuant to § 201.102, service shall be made pursuant to paragraph (c) of this section upon counsel, unless service upon the person represented is ordered by the Commission or the hearing officer.

(c) *How made.* Service shall be made by delivering a copy of the filing. *Delivery* means:

(1) Personal service—handing a copy to the person required to be served; or leaving a copy at the person's office with a clerk or other person in charge thereof, or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein;

(2) Mailing the papers through the U.S. Postal Service by first class, registered, or certified mail or Express Mail delivery addressed to the person;

(3) Sending the papers through a commercial courier service or express delivery service; or

(4) Transmitting the papers by facsimile machine where the following conditions are met:

(i) The persons serving each other by facsimile transmission have agreed to do so in a writing, signed by each party, which specifies such terms as they deem necessary with respect to facsimile machine telephone numbers to be used, hours of facsimile machine operation, the provision of non-facsimile original or copy, and any other such matters; and

(ii) Receipt of each document served by facsimile is confirmed by a manually signed receipt delivered by facsimile machine or other means agreed to by the parties.

(d) *When service is complete.* Personal service, service by U.S. Postal Service Express Mail or service by a commercial courier or express delivery service is complete upon delivery. Service by mail is complete upon mailing. Service by facsimile is complete upon confirmation of transmission by delivery of a manually signed receipt.

§ 201.151 Filing of papers with the Commission: procedure.

(a) *When to file.* All papers required to be served by a party upon any person shall be filed with the Commission at the time of service or promptly thereafter. Papers required to be filed with the Commission must be received within the time limit, if any, for such filing.

(b) *Where to file.* Filing of papers with the Commission shall be made by filing them with the Secretary. When a proceeding is assigned to a hearing officer, a person making a filing with the Secretary shall promptly provide to the hearing officer a copy of any such filing, provided, however, that the hearing officer may direct or permit filings to be made with him or her, in which event the hearing officer shall note thereon the filing date and promptly provide the Secretary with either the original or a copy of any such filings.

(c) *To whom to direct the filing.* Unless otherwise provided, where the Commission has assigned a case to a hearing officer, all motions, objections, applications or other filings made during a proceeding prior to the filing of an initial decision therein, or, if no initial decision is to be filed, prior to the time fixed for the filing of briefs with the Commission, shall be directed to and decided by the hearing officer.

(d) *Certificate of service.* Papers filed with the Commission or a hearing officer shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service and the mailing address or facsimile telephone number to which service was made, if not made in person. If the method of service to any party is different from the method of service to any other party or the method for filing with the Commission, the certificate shall state why a different means of service was used.

§ 201.152 Filing of papers: form.

(a) *Specifications.* Papers filed in connection with any proceeding as defined in § 201.101(a) shall:

(1) Be on one grade of unglazed white paper measuring 8½ x 11 inches, except that, to the extent that the reduction of larger documents would render them illegible, such documents may be filed on larger paper;

(2) Be typewritten or printed in either 10- or 12-point typeface or otherwise reproduced by a process that produces permanent and plainly legible copies;

(3) Include at the head of the paper, or on a title page, the name of the Commission, the title of the proceeding, the names of the parties, the subject of the particular paper or pleading, and the file number assigned to the proceeding;

(4) Be paginated with left hand margins at least 1 inch wide, and other margins of at least 1 inch;

(5) Be double-spaced, with single-spaced footnotes and single-spaced indented quotations; and

(6) Be stapled, clipped or otherwise fastened in the upper left corner.

(b) *Signature required.* All papers must be dated and signed as provided in § 201.153.

(c) *Suitability for recordkeeping.* Documents which, in the opinion of the Commission, are not suitable for computer scanning or microfilming may be rejected.

(d) *Number of copies.* An original and three copies of all papers shall be filed.

(e) *Form of briefs.* All briefs containing more than 10 pages shall include a table of contents, an alphabetized table of cases, a table of statutes, and a table of other authorities cited, with references to the pages of the brief wherein they are cited.

(f) *Scandalous or impertinent matter.* Any scandalous or impertinent matter contained in any brief or pleading or in connection with any oral presentation in a proceeding may be stricken on order of the Commission or the hearing officer.

§ 201.153 Filing of papers: signature requirement and effect.

(a) *General requirements.* Following the issuance of an order instituting proceedings, every filing of a party represented by counsel shall be signed by at least one counsel of record in his or her name and shall state that counsel's business address and telephone number. A party who acts as his or her own counsel shall sign his or her individual name and state his or her address and telephone number on every filing.

(b) *Effect of signature.* (1) The signature of a counsel or party shall constitute a certification that:

(i) the person signing the filing has read the filing;

(ii) to the best of his or her knowledge, information, and belief, formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(iii) the filing is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of adjudication.

(2) If a filing is not signed, the hearing officer or the Commission shall strike the filing, unless it is signed promptly after the omission is called to the attention of the person making the filing.

§ 201.154 Motions.

(a) *Generally.* Unless made during a hearing or conference, a motion shall be in writing, shall state with particularity the grounds therefor, shall set forth the relief or order sought, and shall be accompanied by a written brief of the points and authorities relied upon. All written motions shall be served in accordance with § 201.150, be filed in accordance with § 201.151, meet the requirements of § 201.152, and be signed in accordance with § 201.153. The Commission or the hearing officer may order that an oral motion be submitted in writing. Unless otherwise ordered by the Commission or the hearing officer, if a motion is properly made to the Commission concerning a proceeding to which a hearing officer is assigned, the proceeding before the hearing officer shall continue pending the determination of the motion by the Commission. No oral argument shall be heard on any motion unless the Commission or the hearing officer otherwise directs.

(b) *Opposing and reply briefs.* Except as provided in § 201.401, briefs in opposition to a motion shall be filed within five days after service of the motion. Reply briefs shall be filed within three days after service of the opposition.

(c) *Length limitation.* A brief in support of or opposition to a motion shall not exceed 10 pages, exclusive of pages containing any table of contents, table of authorities, and/or addendum. Requests for leave to file briefs in excess of 10 pages are disfavored.

§ 201.155 Default; motion to set aside default.

(a) A party to a proceeding may be deemed to be in default and the Commission or the hearing officer may determine the proceeding against that party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true, if that party fails:

(1) To appear, in person or through a representative, at a hearing or conference of which that party has been notified;

(2) To answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding; or

(3) To cure a deficient filing within the time specified by the commission or the hearing officer pursuant to § 201.180(b).

(b) A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. In order to prevent injustice and on such conditions as may be appropriate, the hearing officer, at any time prior to the filing of the initial decision, or the Commission, at any time, may for good cause shown set aside a default.

§ 201.160 Time computation.

(a) *Computation.* In computing any period of time prescribed in or allowed by these Rules of Practice or by order of the Commission, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or Federal legal holiday (as defined in § 201.104), in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal legal holiday. Intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computation when the period of time prescribed or allowed is seven days or less, not including any additional time allowed for service by mail in paragraph (b) of this section. If on the day a filing is to be made, weather or other conditions have caused the Secretary's office or other designated filing location to close, the filing deadline shall be extended to the end of the next day that is neither a Saturday, a Sunday, nor a Federal legal holiday.

(b) *Additional time for service by mail.* If service is made by mail, three days shall be added to the prescribed period for response.

§ 201.161 Extensions of time, postponements and adjournments.

(a) *Availability.* Except as otherwise provided by law, the Commission, at any time, or the hearing officer, at any time prior to the filing of his or her

initial decision or, if no initial decision is to be filed, at any time prior to the closing of the record, may, for good cause shown, extend or shorten any time limits prescribed by these Rules of Practice for the filing of any papers and may, consistent with paragraph (b) of this section, postpone or adjourn any hearing.

(b) *Limitations on postponements, adjournments and extensions.* A hearing shall begin at the time and place ordered, provided that, within the limits provided by statute, the Commission or the hearing officer may for good cause shown postpone the commencement of the hearing or adjourn a convened hearing for a reasonable period of time or change the place of hearing.

(1) *Additional considerations.* In considering a motion for postponement of the start of a hearing, adjournment once a hearing has begun, or extensions of time for filing papers, the hearing officer or the Commission shall consider, in addition to any other factors:

(i) The length of the proceeding to date;

(ii) The number of postponements, adjournments or extensions already granted;

(iii) The stage of the proceedings at the time of the request; and

(iv) Any other such matters as justice may require.

(2) *Time limit.* Postponements, adjournments or extensions of time for filing papers shall not exceed 21 days unless the Commission or the hearing officer states on the record or sets forth in a written order the reasons why a longer period of time is necessary.

§ 201.180 Sanctions.

(a) *Contemptuous conduct.*

(1) *Subject to exclusion or suspension.* Contemptuous conduct by any person before the Commission or a hearing officer during any proceeding, including any conference, shall be grounds for the Commission or the hearing officer to:

(i) Exclude that person from such hearing or conference, or any portion thereof; and/or

(ii) Summarily suspend that person from representing others in the proceeding in which such conduct occurred for the duration, or any portion, of the proceeding.

(2) *Review procedure.* A person excluded from a hearing or conference, or a counsel summarily suspended from practice for the duration or any portion of a proceeding, may seek review of the exclusion or suspension by filing with the Commission, within three days of the exclusion or suspension order, a motion to vacate the order. The Commission shall consider such motion on an expedited basis as provided in § 201.500.

(3) *Adjournment.* Upon motion by a party represented by counsel subject to an order of exclusion or suspension, an adjournment shall be granted to allow the retention of new counsel. In determining the length of an adjournment, the Commission or hearing officer shall consider, in addition to the factors set forth in § 201.161, the availability of co-counsel for the party or of other members of a suspended counsel's firm.

(b) *Deficient filings; leave to cure deficiencies.* The Commission or the hearing officer may reject, in whole or in part, any filing that fails to comply with any requirements of these Rules of Practice or of any order issued in the proceeding in which the filing was made. Any such filings shall not be part of the record. The Commission or the hearing officer may direct a party to cure any deficiencies and to resubmit the filing within a fixed time period.

(c) *Failure to make required filing or to cure deficient filing.* The Commission or the hearing officer may enter a default pursuant to § 201.155, dismiss the case, decide the particular matter at issue against that person, or prohibit the introduction of evidence or exclude testimony concerning that matter if a person fails:

(1) To make a filing required under these Rules of Practice; or

(2) To cure a deficient filing within the time specified by the Commission or the hearing officer pursuant to paragraph (b) of this section.

§ 201.190 Confidential treatment of information in certain filings.

(a) *Application.* An application for confidential treatment pursuant to the provisions of Clause 30 of Schedule A of the Securities Act of 1933, 15 U.S.C. 77aa(30), and Rule 406 thereunder, 17 CFR 230.406; Section 24(b)(2) of the Securities Exchange Act of 1934, 15 U.S.C. 78x(b)(2), and Rule 24b–2 thereunder, 17 CFR 240.24b–2; Section 22(b) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79v(b), and Rule 104 thereunder, 17 CFR 250.104; Section 45(a) of the Investment Company Act of 1940, 15 U.S.C. 80a–44(a), and Rule 45a–1 thereunder, 17 CFR 270.45a–1; or Section 210(a) of the Investment Advisers Act of 1940, 15 U.S.C. 80b–10(a), shall be filed with the Secretary. The application shall be accompanied by a sealed copy of the materials as to which confidential treatment is sought.

(b) *Procedure for supplying additional information.* The applicant may be required to furnish in writing additional information with respect to the grounds for objection to public disclosure. Failure to supply the information so requested within 14 days from the date of receipt by the applicant of a notice of the information required shall be deemed a waiver of the objection to public disclosure of that portion of the information to which the additional information relates, unless the Commission or the hearing officer shall otherwise order for good cause shown at or before the expiration of such 14-day period.

(c) *Confidentiality of materials pending final decision.* Pending the determination of the application for confidential treatment, transcripts, non-final orders including an initial decision, if any, and other materials in connection with the application shall be placed under seal; shall be for the confidential use only of the hearing officer, the Commission, the applicant, and any other parties and counsel; and shall be made available to the public only in accordance with orders of the Commission.

(d) *Public availability of orders.* Any final order of the Commission denying or sustaining an application for confidential treatment shall be made public. Any prior findings or opinions relating to an application for confidential treatment under this section shall be made public at such time as the material as to which confidentiality was requested is made public.

§ 201.191 Adjudications not required to be determined on the record after notice and opportunity for hearing.

(a) *Scope of the rule.* This rule applies to every case of adjudication, as defined in 5 U.S.C. 551, pursuant to any statute which the Commission administers, where adjudication is not required to be determined on the record after notice and opportunity for hearing and which the Commission has not chosen to determine on the record after notice and opportunity for hearing.

(b) *Procedure.* In every case of adjudication under paragraph (a) of this section, the Commission shall give prompt notice of any adverse action or final disposition to any person who has requested the Commission to make (or not to make) any such adjudication, and furnish to any such person a written statement of reasons therefor. Additional procedures may be specified in rules relating to specific types of such adjudications. Where any such rule provides for the publication of a Commission order, notice of the action

or disposition shall be deemed to be given by such publication.

(c) *Contents of the record.* If the Commission provides notice and opportunity for the submission of written comments by parties to the adjudication or, as the case may be, by other interested persons, written comments received on or before the closing date for comments, unless accorded confidential treatment pursuant to statute or rule of the Commission, become a part of the record of the adjudication. The Commission, in its discretion, may accept and include in the record written comments filed with the Commission after the closing date.

§ 201.192 Rulemaking: issuance, amendment and repeal of rules of general application.

(a) *By petition.* Any person desiring the issuance, amendment or repeal of a rule of general application may file a petition therefor with the Secretary. Such petition shall include a statement setting forth the text or the substance of any proposed rule or amendment desired or specifying the rule the repeal of which is desired, and stating the nature of his or her interest and his or her reasons for seeking the issuance, amendment or repeal of the rule. The Secretary shall acknowledge, in writing, receipt of the petition and refer it to the appropriate division or office for consideration and recommendation. Such recommendations shall be transmitted with the petition to the Commission for such action as the Commission deems appropriate. The Secretary shall notify the petitioner of the action taken by the Commission.

(b) *Notice of proposed issuance, amendment or repeal of rules.* Except where the Commission finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, whenever the Commission proposes to issue, amend, or repeal any rule or regulation of general application other than an interpretive rule; general statement of policy; or rule of agency organization, procedure, or practice; or any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts, there shall first be published in the **Federal Register** a notice of the proposed action. Such notice shall include:

(1) A statement of the time, place, and nature of the rulemaking proceeding, with particular reference to the manner in which interested persons shall be afforded the opportunity to participate in such proceeding;

(2) Reference to the authority under which the rule is proposed; and

(3) The terms or substance of the proposed rule or a description of the subjects and issues involved.

§ 201.193 Applications by barred individuals for consent to associate.

Preliminary note

This rule governs applications to the Commission by certain persons, barred by Commission order from association with brokers, dealers, municipal securities dealers, government securities brokers, government securities dealers, investment advisers, investment companies or transfer agents, for consent to become so associated. Applications made pursuant to this section must show that the proposed association would be consistent with the public interest. In addition to the information specifically required by the rule, applications should be supplemented, where appropriate, by written statements of individuals (other than the applicant) who are competent to attest to the applicant's character, employment performance, and other relevant information. Intentional misstatements or omissions of fact may constitute criminal violations of 18 U.S.C. 1001 *et seq.* and other provisions of law.

The nature of the supervision that an applicant will receive or exercise as an associated person with a registered entity is an important matter bearing upon the public interest. In meeting the burden of showing that the proposed association is consistent with the public interest, the application and supporting documentation must demonstrate that the proposed supervision, procedures, or terms and conditions of employment are reasonably designed to prevent a recurrence of the conduct that led to imposition of the bar. As an associated person, the applicant will be limited to association in a specified capacity with a particular registered entity and may also be subject to specific terms and conditions.

Normally, the applicant's burden of demonstrating that the proposed association is consistent with the public interest will be difficult to meet where the applicant is to be supervised by, or is to supervise, another barred individual. In addition, where an applicant wishes to become the sole proprietor of a registered entity and thus is seeking Commission consent notwithstanding an absence of supervision, the applicant's burden will be difficult to meet.

In addition to the factors set forth in paragraph (d) of this section, the Commission will consider the nature of the findings that resulted in the bar when making its determination as to whether the proposed association is consistent with the public interest. In this regard, attention is directed to Rule 5(e) of the Commission's Rules on Informal and Other Procedures, 17 CFR 202.5(e). Among other things, Rule 5(e) sets forth the Commission's policy ''not to permit a * * * respondent [in an administrative proceeding] to consent to * * * [an] order that imposes a sanction while denying the allegations in the * * * order for proceedings.'' Consistent with the rationale underlying that policy, and in order to avoid the appearance that an application made pursuant to this section was granted on the basis of such denial, the Commission will not consider any application that attempts to reargue or collaterally attack the findings that resulted in the Commission's bar order.

(a) *Scope of rule.* Applications for Commission consent to associate, or to change the terms and conditions of association, with a registered broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, investment company or transfer agent may be made pursuant to this section where a Commission order bars the individual from association with a registered entity and:

(1) Such barred individual seeks to become associated with an entity that is not a member of a self-regulatory organization; or

(2) The order contains a proviso that application may be made to the Commission after a specified period of time.

(b) *Form of application.* Each application shall be supported by an affidavit, manually signed by the applicant, that addresses the factors set forth in paragraph (d) of this section. One original and three copies of the application shall be filed pursuant to §§ 201.151, 201.152 and 201.153. Each application shall include as exhibits:

(1) A copy of the Commission order imposing the bar;

(2) An undertaking by the applicant to notify immediately the Commission in writing if any information submitted in support of the application becomes materially false or misleading while the application is pending;

(3) The following forms, as appropriate:

(i) A copy of a completed Form U–4, where the applicant's proposed association is with a broker-dealer or municipal securities dealer;

(ii) A copy of a completed Form MSD–4, where the applicant's proposed association is with a bank municipal securities dealer;

(iii) The information required by Form ADV, 17 CFR 279.1, with respect to the applicant, where the applicant's proposed association is with an investment adviser;

(iv) The information required by Form TA–1, 17 CFR 249b.100, with respect to the applicant, where the applicant's proposed association is with a transfer agent; and

(4) A written statement by the proposed employer that describes:

(i) The terms and conditions of employment and supervision to be

exercised over such applicant and, where applicable, by such applicant;

(ii) The qualifications, experience, and disciplinary records of the proposed supervisor(s) of the applicant;

(iii) The compliance and disciplinary history, during the two years preceding the filing of the application, of the office in which the applicant will be employed; and

(iv) The names of any other associated persons in the same office who have previously been barred by the Commission, and whether they are to be supervised by the applicant.

(c) *Required showing.* The applicant shall make a showing satisfactory to the Commission that the proposed association would be consistent with the public interest.

(d) *Factors to be addressed.* The affidavit required by paragraph (b) of this section shall address each of the following:

(1) The time period since the imposition of the bar;

(2) Any restitution or similar action taken by the applicant to recompense any person injured by the misconduct that resulted in the bar;

(3) The applicant's compliance with the order imposing the bar;

(4) The applicant's employment during the period subsequent to imposition of the bar;

(5) The capacity or position in which the applicant proposes to be associated;

(6) The manner and extent of supervision to be exercised over such applicant and, where applicable, by such applicant;

(7) Any relevant courses, seminars, examinations or other actions completed by the applicant subsequent to imposition of the bar to prepare for his or her return to the securities business; and

(8) Any other information material to the application.

(e) *Notification to applicant and written statement.* In the event an adverse recommendation is proposed by the staff with respect to an application made pursuant to this section, the applicant shall be so advised and provided with a written statement of the reasons for such recommendation. The applicant shall then have 30 days to submit a written statement in response.

(f) *Concurrent applications.* The Commission will not consider any application submitted pursuant to this section if any other application for consent to associate concerning the same applicant is pending before any self-regulatory organization.

Initiation of Proceedings and Prehearing Rules

§ 201.200 Initiation of proceedings.

(a) *Order instituting proceedings: notice and opportunity for hearing.*(1) *Generally.* Whenever an order instituting proceedings is issued by the Commission, appropriate notice thereof shall be given to each party to the proceeding by the Secretary or another duly designated officer of the Commission. Each party shall be given notice of any hearing within a time reasonable in light of the circumstances, in advance of the hearing; provided, however, no prior notice need be given to a respondent if the Commission has authorized the Division of Enforcement to seek a temporary sanction *ex parte*.

(2) *Stop order proceedings: additional persons entitled to notice.* Any notice of a proceeding relating to the issuance of a stop order suspending the effectiveness of a registration statement pursuant to Section 8(d) of the Securities Act of 1933, 15 U.S.C. 77h(d), shall be sent to or served on the issuer; or, in the case of a foreign government or political subdivision thereof, sent to or served on the underwriter; or, in the case of a foreign or territorial person, sent to or served on its duly authorized representative in the United States named in the registration statement, properly directed in the case of telegraphic notice to the address given in such statement. In addition, if such proceeding is commenced within 90 days after the registration statement has become effective, notice of the proceeding shall be given to the agent for service named on the facing sheet of the registration statement and to each other person designated on the facing sheet of the registration statement as a person to whom copies of communications to such agent are to be sent.

(b) *Content of order.* The order instituting proceedings shall:

(1) State the nature of any hearing;

(2) State the legal authority and jurisdiction under which the hearing is to be held;

(3) Contain a short and plain statement of the matters of fact and law to be considered and determined, unless the order directs an answer pursuant to § 201.220 in which case the order shall set forth the factual and legal basis alleged therefor in such detail as will permit a specific response thereto; and

(4) State the nature of any relief or action sought or taken.

(c) *Time and place of hearing.* The time and place for any hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties, other participants, or their representatives.

(d) *Amendment to order instituting proceedings.*(1) *By the Commission.* Upon motion by a party, the Commission may, at any time, amend an order instituting proceedings to include new matters of fact or law.

(2) *By the hearing officer.* Upon motion by a party, the hearing officer may, at any time prior to the filing of an initial decision or, if no initial decision is to be filed, prior to the time fixed for the filing of final briefs with the Commission, amend an order instituting proceedings to include new matters of fact or law that are within the scope of the original order instituting proceedings.

(e) *Publication of notice of public hearings.* Unless otherwise ordered by the Commission, notice of any public hearing shall be given general circulation by release to the public, by publication in the *SEC News Digest* and, where directed, by publication in the **Federal Register**.

§ 201.201 Consolidation of proceedings.

By order of the Commission or a hearing officer, proceedings involving a common question of law or fact may be consolidated for hearing of any or all the matters at issue in such proceedings. The Commission or the hearing officer may make such orders concerning the conduct of such proceedings as it deems appropriate to avoid unnecessary cost or delay. Consolidation shall not prejudice any rights under these Rules of Practice and shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred. For purposes of this section, no distinction is made between joinder and consolidation of proceedings.

§ 201.202 Specification of procedures by parties in certain proceedings.

(a) *Motion to specify procedures.* In any proceeding other than an enforcement or disciplinary proceeding or a proceeding to review a determination by a self-regulatory organization pursuant to §§ 201.420 and 201.421, a party may, at any time up to 20 days prior to the start of a hearing, make a motion to specify the procedures necessary or appropriate for the proceeding, with particular reference to:

(1) Whether there should be an initial decision by a hearing officer;

(2) Whether any interested division of the Commission may assist in the preparation of the Commission's decision; and

(3) Whether there should be a 30-day waiting period between the issuance of

the Commission's order and the date it is to become effective.

(b) *Objections; effect of failure to object.* Any other party may object to the procedures so specified, and such party may specify such additional procedures as it considers necessary or appropriate. In the absence of such objection or such specification of additional procedures, such other party may be deemed to have waived objection to the specified procedures.

(c) *Approval required.* Any proposal pursuant to paragraph (a) of this section, even if not objected to by any party, shall be subject to the written approval of the hearing officer.

(d) *Procedure upon agreement to waive an initial decision.* If an initial decision is waived pursuant to paragraph (a) of this section, the hearing officer shall notify the Secretary and, unless the Commission directs otherwise within 14 days, no initial decision shall be issued.

§ 201.210 Parties, limited participants and amici curiae.

(a) *Parties in an enforcement or disciplinary proceeding or a proceeding to review a self-regulatory organization determination.* (1) *Generally.* No person shall be granted leave to become a party or a non-party participant on a limited basis in an enforcement or disciplinary proceeding or a proceeding to review a determination by a self-regulatory organization pursuant to §§ 201.420 and 201.421.

(2) *Disgorgement proceedings.* In an enforcement proceeding, a person may state his or her views with respect to a proposed plan of disgorgement or file a proof of claim pursuant to § 201.612.

(b) *Intervention as a party.* (1) *Generally.* In any proceeding, other than an enforcement proceeding, a disciplinary proceeding or a proceeding to review a self-regulatory organization determination, any person may seek leave to intervene as a party by filing a motion setting forth the person's interest in the proceeding. No person, however, shall be admitted as a party to a proceeding by intervention unless it is determined that leave to participate pursuant to paragraph (c) of this section would be inadequate for the protection of his or her interests.

(i) In a proceeding under the Public Utility Holding Company Act of 1935, any representative of interested consumers or security holders, or any other person whose participation in the proceeding may be in the public interest or for the protection of investors or consumers, may be admitted as a party upon the filing of a written motion setting forth the person's interest in the proceeding.

(ii) In a proceeding under the Investment Company Act of 1940, any representative of interested security holders, or any other person whose participation in the proceeding may be in the public interest or for the protection of investors, may be admitted as a party upon the filing of a written motion setting forth the person's interest in the proceeding.

(2) *Intervention as of right.* (i) In proceedings under the Public Utility Holding Company Act of 1935, any interested representative, agency, authority or instrumentality of the United States or any interested State, State commission, municipality or other political subdivision of a state shall be admitted as a party to any proceeding upon the filing of a written motion requesting leave to be admitted.

(ii) In proceedings under the Investment Company Act of 1940, any interested State or State agency shall be admitted as a party to any proceeding upon the filing of a written motion requesting leave to be admitted.

(c) *Leave to participate on a limited basis.* In any proceeding, other than an enforcement proceeding, a disciplinary proceeding or a proceeding to review a self-regulatory organization determination, any person may seek leave to participate on a limited basis as a non-party participant as to any matter affecting the person's interests.

(1) *Procedure.* Motions for leave to participate shall be in writing, shall set forth the nature and extent of the movant's interest in the proceeding, and, except where good cause for late filing is shown, shall be filed not later than 20 days prior to the date fixed for the commencement of the hearing. Leave to participate pursuant to this paragraph (c) may include such rights of a party as the hearing officer may deem appropriate. Persons granted leave to participate shall be served in accordance with § 201.150; provided, however, that a party to the proceeding may move that the extent of notice of filings or other papers to be provided to persons granted leave to participate be limited, or may move that the persons granted leave to participate bear the cost of being provided copies of any or all filings or other papers. Persons granted leave to participate shall be bound, except as may be otherwise determined by the hearing officer, by any stipulation between the parties to the proceeding with respect to procedure, including submission of evidence, substitution of exhibits, corrections of the record, the time within which briefs or exceptions may be filed or proposed findings and conclusions may be submitted, the filing of initial decisions, the procedure to be followed in the preparation of decisions and the effective date of the Commission's order in the case. Where the filing of briefs or exceptions or the submission of proposed findings and conclusions are waived by the parties to the proceedings, a person granted leave to participate pursuant to this paragraph (c) shall not be permitted to file a brief or exceptions or submit proposed findings and conclusions except by leave of the Commission or of the hearing officer.

(2) *Certain persons entitled to leave to participate.* The hearing officer is directed to grant leave to participate under this paragraph (c) to any person to whom it is proposed to issue any security in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the Commission is authorized to approve the terms and conditions of such issuance and exchange after a hearing upon the fairness of such terms and conditions.

(d) *Amicus participation.*

(1) *Availability.* An amicus brief may be filed only if:

(i) A motion for leave to file the brief has been granted;

(ii) The brief is accompanied by written consent of all parties;

(iii) The brief is filed at the request of the Commission or the hearing officer; or

(iv) The brief is presented by the United States or an officer or agency thereof, or by a State, Territory or Commonwealth.

(2) *Procedure.* An amicus brief may be filed conditionally with the motion for leave. The motion for leave shall identify the interest of the movant and shall state the reasons why a brief of an amicus curiae is desirable. Except as all parties otherwise consent, any amicus curiae shall file its brief within the time allowed the party whose position the amicus will support, unless the Commission or hearing officer, for cause shown, grants leave for a later filing. In the event that a later filing is allowed, the order granting leave to file shall specify when an opposing party may reply to the brief. A motion of an amicus curiae to participate in oral argument will be granted only for extraordinary reasons.

(e) *Permission to state views.* Any person may make a motion seeking leave to file a memorandum or make an oral statement of his or her views. Any such communication may be included in the record; provided, however, that unless offered and admitted as evidence

of the truth of the statements therein made, any assertions of fact submitted pursuant to the provisions of this paragraph (e) will be considered only to the extent that the statements therein made are otherwise supported by the record.

(f) *Modification of participation provisions.* The Commission or the hearing officer may, by order, modify the provisions of this section which would otherwise be applicable, and may impose such terms and conditions on the participation of any person in any proceeding as it may deem necessary or appropriate in the public interest.

201.220 Answer to allegations.

(a) *When required.* In its order instituting proceedings, the Commission may require any party to file an answer to each of the allegations contained therein. Even if not so ordered, any party in any proceeding may elect to file an answer. Any other person granted leave by the Commission or the hearing officer to participate on a limited basis in such proceedings pursuant to § 201.210(c) may be required to file an answer.

(b) *When to file.* Except where a different period is provided by rule or by order, a party required to file an answer as provided in paragraph (a) of this section shall do so within 20 days after service upon the party of the order instituting proceedings. Persons granted leave to participate on a limited basis in the proceeding pursuant to § 201.210(c) may file an answer within a reasonable time, as determined by the Commission or the hearing officer. If the order instituting proceedings is amended, the Commission or the hearing officer may require that an amended answer be filed and, if such an answer is required, shall specify a date for the filing thereof.

(c) *Contents; effect of failure to deny.* Unless otherwise directed by the hearing officer or the Commission, an answer shall specifically admit, deny, or state that the party does not have, and is unable to obtain, sufficient information to admit or deny each allegation in the order instituting proceedings. When a party intends in good faith to deny only a part of an allegation, the party shall specify so much of it as is true and shall deny only the remainder. A statement of a lack of information shall have the effect of a denial. A defense of res judicata, statute of limitations or any other matter constituting an affirmative defense shall be asserted in the answer. Any allegation not denied shall be deemed admitted.

(d) *Motion for more definite statement.* A party may file with an answer a motion for a more definite statement of specified matters of fact or law to be considered or determined. Such motion shall state the respects in which, and the reasons why, each such matter of fact or law should be required to be made more definite. If the motion is granted, the order granting such motion shall set the periods for filing such a statement and any answer thereto.

(e) *Amendments.* A party may amend its answer at any time by written consent of each adverse party or with leave of the Commission or the hearing officer. Leave shall be freely granted when justice so requires.

(f) *Failure to file answer: default.* If a party respondent fails to file an answer required by this section within the time provided, such person may be deemed in default pursuant to § 201.155(a). A party may make a motion to set aside a default pursuant to § 201.155(b).

201.221 Prehearing conferences.

(a) *Purposes of conferences.* The purposes of prehearing conferences include, but are not limited to:

(1) Expediting the disposition of the proceeding;

(2) Establishing early and continuing control of the proceeding by the hearing officer; and

(3) Improving the quality of the hearing through more thorough preparation.

(b) *Procedure.* On his or her own motion or at the request of a party, the hearing officer may, in his or her discretion, direct counsel or any party to meet for an initial, final or other prehearing conference. Such conferences may be held with or without the hearing officer present as the hearing officer deems appropriate. Where such a conference is held outside the presence of the hearing officer, the hearing officer shall be advised promptly by the parties of any agreements reached. Such conferences also may be held with one or more persons participating by telephone or other remote means.

(c) *Subjects to be discussed.* At a prehearing conference consideration may be given and action taken with respect to any and all of the following:

(1) Simplification and clarification of the issues;

(2) Exchange of witness and exhibit lists and copies of exhibits;

(3) Stipulations, admissions of fact, and stipulations concerning the contents, authenticity, or admissibility into evidence of documents;

(4) Matters of which official notice may be taken;

(5) The schedule for exchanging prehearing motions or briefs, if any;

(6) The method of service for papers other than Commission orders;

(7) Summary disposition of any or all issues;

(8) Settlement of any or all issues;

(9) Determination of hearing dates;

(10) Amendments to the order instituting proceedings or answers thereto;

(11) Production of documents as set forth in § 201.230, and prehearing production of documents in response to subpoenas duces tecum as set forth in § 201.232;

(12) Specification of procedures as set forth in § 201.202; and

(13) Such other matters as may aid in the orderly and expeditious disposition of the proceeding.

(d) *Required prehearing conferences.* Except where the emergency nature of a proceeding would make a prehearing conference clearly inappropriate, both an initial and a final prehearing conference should be held. Unless ordered otherwise, an initial prehearing conference shall be held within 14 days of the service of an answer, or if no answer is required, within 14 days of service of the order instituting proceedings. A final conference shall be held as close to the start of the hearing as reasonable under the circumstances.

(e) *Prehearing orders.* At or following the conclusion of any conference held pursuant to this section, the hearing officer shall enter a ruling or order which recites the agreements reached and any procedural determinations made by the hearing officer.

(f) *Failure to appear: default.* Any person who is named in an order instituting proceedings as a person against whom findings may be made or sanctions imposed and who fails to appear, in person or through a representative, at a prehearing conference of which he or she has been duly notified may be deemed in default pursuant to § 201.155(a). A party may make a motion to set aside a default pursuant to § 201.155(b).

§ 201.222 Prehearing submissions.

(a) *Submissions generally.* The hearing officer, on his or her own motion, or at the request of a party or other participant, may order any party, including the interested division, to furnish such information as deemed appropriate, including any or all of the following:

(1) An outline or narrative summary of its case or defense;

(2) The legal theories upon which it will rely;

(3) Copies and a list of documents that it intends to introduce at the hearing; and

(4) A list of witnesses who will testify on its behalf, including the witnesses' names, occupations, addresses and a brief summary of their expected testimony.

(b) *Expert witnesses.* Each party who intends to call an expert witness shall submit, in addition to the information required by paragraph (a)(4) of this section, a statement of the expert's qualifications, a listing of other proceedings in which the expert has given expert testimony, and a list of publications authored or co-authored by the expert.

§ 201.230 Enforcement and disciplinary proceedings: availability of documents for inspection and copying.

For purposes of this section, the term *documents* shall include writings, drawings, graphs, charts, photographs, recordings and other data compilations, including data stored by computer, from which information can be obtained.

(a) *Documents to be available for inspection and copying.* (1) Unless otherwise provided by this section, or by order of the Commission or the hearing officer, the Division of Enforcement shall make available for inspection and copying by any party documents obtained by the Division prior to the institution of proceedings, in connection with the investigation leading to the Division's recommendation to institute proceedings. Such documents shall include:

(i) Each subpoena issued;

(ii) Every other written request to persons not employed by the Commission to provide documents or to be interviewed;

(iii) The documents turned over in response to any such subpoenas or other written requests;

(iv) All transcripts and transcript exhibits;

(v) Any other documents obtained from persons not employed by the Commission; and

(vi) Any final examination or inspection reports prepared by the Division of Market Regulation or the Division of Investment Management.

(2) Nothing in this paragraph (a) shall limit the right of the Division to make available any other document, or shall limit the right of a respondent to seek access to or production pursuant to subpoena of any other document, or shall limit the authority of the hearing officer to order the production of any document pursuant to subpoena.

(b) *Documents that may be withheld.* (1) The Division of Enforcement may withhold a document if:

(i) The document is privileged;

(ii) The document is an internal memorandum, note or writing prepared by a Commission employee, other than an examination or inspection report as specified in paragraph (a)(1)(vi) of this section, or is otherwise attorney work product and will not be offered in evidence;

(iii) The document would disclose the identity of a confidential source; or

(iv) The hearing officer grants leave to withhold a document or category of documents as not relevant to the subject matter of the proceeding or otherwise, for good cause shown.

(2) Nothing in this paragraph (b) authorizes the Division of Enforcement in connection with an enforcement or disciplinary proceeding to withhold, contrary to the doctrine of *Brady v. Maryland*, 373 U.S. 83, 87 (1963), documents that contain material exculpatory evidence.

(c) *Withheld document list.* The hearing officer may require the Division of Enforcement to submit for review a list of documents withheld pursuant to paragraphs (b)(1) through (b)(4) of this section or to submit any document withheld, and may determine whether any such document should be made available for inspection and copying.

(d) *Timing of inspection and copying.* Unless otherwise ordered by the Commission or the hearing officer, the Division of Enforcement shall commence making documents available to a respondent for inspection and copying pursuant to this section no later than 14 days after the respondent files an answer. In a proceeding in which a temporary cease-and-desist order is sought pursuant to § 201.510 or a temporary suspension of registration is sought pursuant to § 201.520, documents shall be made available no later than the day after service of the decision as to whether to issue a temporary cease-and-desist order or temporary suspension order.

(e) *Place of inspection and copying.* Documents subject to inspection and copying pursuant to this section shall be made available to the respondent for inspection and copying at the Commission office where they are ordinarily maintained, or at such other place as the parties, in writing, may agree. A respondent shall not be given custody of the documents or leave to remove the documents from the Commission's offices pursuant to the requirements of this section other than by written agreement of the Division of Enforcement. Such agreement shall specify the documents subject to the agreement, the date they shall be returned and such other terms or conditions as are appropriate to provide for the safekeeping of the documents.

(f) *Copying costs and procedures.* The respondent may obtain a photocopy of any documents made available for inspection. The respondent shall be responsible for the cost of photocopying. Unless otherwise ordered, charges for copies made by the Division of Enforcement at the request of the respondent will be at the rate charged pursuant to the fee schedule at 17 CFR 200.80e for copies. The respondent shall be given access to the documents at the Commission's offices or such other place as the parties may agree during normal business hours for copying of documents at the respondent's expense.

(g) *Issuance of investigatory subpoenas after institution of proceedings.* The Division of Enforcement shall promptly inform the hearing officer and each party if investigatory subpoenas are issued under the same investigation file number or pursuant to the same order directing private investigation (''formal order'') under which the investigation leading to the institution of proceedings was conducted. The hearing officer shall order such steps as necessary and appropriate to assure that the issuance of investigatory subpoenas after the institution of proceedings is not for the purpose of obtaining evidence relevant to the proceedings and that any relevant documents that may be obtained through the use of investigatory subpoenas in a continuing investigation are made available to each respondent for inspection and copying on a timely basis.

(h) *Failure to make documents available—harmless error.* In the event that a document required to be made available to a respondent pursuant to this section is not made available by the Division of Enforcement, no rehearing or redecision of a proceeding already heard or decided shall be required, unless the respondent shall establish that the failure to make the document available was not harmless error.

§ 201.231 Enforcement and disciplinary proceedings: production of witness statements.

(a) *Availability.* Any respondent in an enforcement or disciplinary proceeding may move that the Division of Enforcement produce for inspection and copying any statement of any person called or to be called as a witness by the division that pertains, or is expected to pertain, to his or her direct testimony and that would be required to be produced pursuant to the Jencks Act, 18 U.S.C. 3500. Such production shall be

made at a time and place fixed by the hearing officer and shall be made available to any party, provided, however, that the production shall be made under conditions intended to preserve the items to be inspected or copied.

(b) *Failure to produce—harmless error.* In the event that a statement required to be made available for inspection and copying by a respondent is not turned over by the Division of Enforcement, no rehearing or redecision of a proceeding already heard or decided shall be required unless the respondent establishes that the failure to turn over the statement was not harmless error.

§ 201.232 Subpoenas.

(a) *Availability; procedure.* In connection with any hearing ordered by the Commission, a party may request the issuance of subpoenas requiring the attendance and testimony of witnesses at the designated time and place of hearing, and subpoenas requiring the production of documentary or other tangible evidence returnable at any designated time or place. Unless made on the record at a hearing, requests for issuance of a subpoena shall be made in writing and served on each party pursuant to § 201.150. A person whose request for a subpoena has been denied or modified may not request that any other person issue the subpoena.

(1) *Unavailability of hearing officer.* In the event that the hearing officer assigned to a proceeding is unavailable, the party seeking issuance of the subpoena may seek its issuance from the first available of the following persons: the Chief Administrative Law Judge, the law judge most senior in service as a law judge, the duty officer, any other member of the Commission, or any other person designated by the Commission to issue subpoenas. Requests for issuance of a subpoena made to the Commission, or any member thereof, must be submitted to the Secretary, not to an individual Commissioner.

(2) *Signing may be delegated.* A hearing officer may authorize issuance of a subpoena, and may delegate the manual signing of the subpoena to any other person authorized to issue subpoenas.

(b) *Standards for issuance.* Where it appears to the person asked to issue the subpoena that the subpoena sought may be unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may, in his or her discretion, as a condition precedent to the issuance of the subpoena, require the person seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought. If after consideration of all the circumstances, the person requested to issue the subpoena determines that the subpoena or any of its terms is unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena, or issue it only upon such conditions as fairness requires. In making the foregoing determination, the person issuing the subpoena may inquire of the other participants whether they will stipulate to the facts sought to be proved.

(c) *Service.* Service shall be made pursuant to the provisions of § 201.150 (b) through (d). The provisions of this paragraph (c) shall apply to the issuance of subpoenas for purposes of investigations, as required by 17 CFR 203.8, as well as hearings.

(d) *Tender of fees required.* When a subpoena compelling the attendance of a person at a hearing or deposition is issued at the instance of anyone other than an officer or agency of the United States, service is valid only if the subpoena is accompanied by a tender to the subpoenaed person of the fees for one day's attendance and mileage specified by paragraph (f) of this section.

(e) *Application to quash or modify.* (1) *Procedure.* Any person to whom a subpoena is directed or who is an owner, creator or the subject of the documents that are to be produced pursuant to a subpoena may, prior to the time specified therein for compliance, but in no event more than 15 days after the date of service of such subpoena, request that the subpoena be quashed or modified. Such request shall be made by application filed with the Secretary and served on all parties pursuant to § 201.150. The party on whose behalf the subpoena was issued may, within five days of service of the application, file an opposition to the application. If a hearing officer has been assigned to the proceeding, the application to quash shall be directed to that hearing officer for consideration, even if the subpoena was issued by another person.

(2) *Standards governing application to quash or modify.* If compliance with the subpoena would be unreasonable, oppressive or unduly burdensome, the hearing officer or the Commission shall quash or modify the subpoena, or may order return of the subpoena only upon specified conditions. These conditions may include but are not limited to a requirement that the party on whose behalf the subpoena was issued shall make reasonable compensation to the person to whom the subpoena was addressed for the cost of copying or transporting evidence to the place for return of the subpoena.

(f) *Witness fees and mileage.* Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

§ 201.233 Depositions upon oral examination.

(a) *Procedure.* Any party desiring to take the testimony of a witness by deposition shall make a written motion setting forth the reasons why such deposition should be taken including the specific reasons why the party believes the witness will be unable to attend or testify at the hearing; the name and address of the prospective witness; the matters concerning which the prospective witness is expected to be questioned; and the proposed time and place for the taking of the deposition.

(b) *Required finding when ordering a deposition.* In the discretion of the Commission or the hearing officer, an order for deposition may be issued upon a finding that the prospective witness will likely give testimony material to the proceeding, that it is likely the prospective witness will be unable to attend or testify at the hearing because of age, sickness, infirmity, imprisonment or other disability, and that the taking of a deposition will serve the interests of justice.

(c) *Contents of order.* An order for deposition shall designate by name a deposition officer. The designated officer may be the hearing officer or any other person authorized to administer oaths by the laws of the United States or of the place where the deposition is to be held. An order for deposition also shall state:

(1) The name of the witness whose deposition is to be taken;

(2) The scope of the testimony to be taken;

(3) The time and place of the deposition;

(4) The manner of recording, preserving and filing the deposition; and

(5) The number of copies, if any, of the deposition and exhibits to be filed upon completion of the deposition.

(d) *Procedure at depositions.* A witness whose testimony is taken by deposition shall be sworn or shall affirm before any questions are put to him or

her. Examination and cross-examination of deponents may proceed as permitted at a hearing. The witness being deposed may have counsel present during the deposition.

(e) *Objections to questions or evidence.* Objections to questions or evidence shall be in short form, stating the grounds of objection relied upon. Objections to questions or evidence shall be noted by the deposition officer upon the deposition, but a deposition officer other than the hearing officer shall not have the power to decide on the competency, materiality or relevance of evidence. Failure to object to questions or evidence before the deposition officer shall not be deemed a waiver unless the ground of the objection is one that might have been obviated or removed if presented at that time.

(f) *Filing of depositions.* The questions propounded and all answers or objections shall be recorded or transcribed verbatim, and a transcript prepared by the deposition officer, or under his or her direction. The transcript shall be subscribed by the witness and certified by the deposition officer. The original deposition and exhibits shall be filed with the Secretary. A copy of the deposition shall be available to the deponent and each party for purchase at prescribed rates.

(g) *Payment.* The cost of the transcript shall be paid by the party requesting the deposition.

§ 201.234 Depositions upon written questions.

(a) *Availability.* Depositions may be taken and submitted on written questions upon motion of any party. The motion shall include the information specified in § 201.233(a). A decision on the motion shall be governed by the provisions of § 201.233(b).

(b) *Procedure.* Written questions shall be filed with the motion. Within 10 days after service of the motion and written questions, any party may file objections to such written questions and any party may file cross-questions. When a deposition is taken pursuant to this section no persons other than the witness, counsel to the witness, the deposition officer, and, if the deposition officer does not act as reporter, a reporter, shall be present at the examination of the witness. No party shall be present or represented unless otherwise permitted by order. The deposition officer shall propound the questions and cross-questions to the witness in the order submitted.

(c) *Additional requirements.* The order for deposition, filing of the deposition, form of the deposition and use of the deposition in the record shall be governed by paragraphs (c) through (g) of § 201.233, except that no cross-examination shall be made.

§ 201.235 Introducing prior sworn statements of witnesses into the record.

(a) At a hearing, any person wishing to introduce a prior, sworn statement of a witness, not a party, otherwise admissible in the proceeding, may make a motion setting forth the reasons therefor. If only part of a statement is offered in evidence, the hearing officer may require that all relevant portions of the statement be introduced. If all of a statement is offered in evidence, the hearing officer may require that portions not relevant to the proceeding be excluded. A motion to introduce a prior sworn statement may be granted if:

(1) The witness is dead;

(2) The witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the prior sworn statement;

(3) The witness is unable to attend or testify because of age, sickness, infirmity, imprisonment or other disability;

(4) The party offering the prior sworn statement has been unable to procure the attendance of the witness by subpoena; or,

(5) In the discretion of the Commission or the hearing officer, it would be desirable, in the interests of justice, to allow the prior sworn statement to be used. In making this determination, due regard shall be given to the presumption that witnesses will testify orally in an open hearing. If the parties have stipulated to accept a prior sworn statement in lieu of live testimony, consideration shall also be given to the convenience of the parties in avoiding unnecessary expense.

§ 201.240 Settlement.

(a) *Availability.* Any person who is notified that a proceeding may or will be instituted against him or her, or any party to a proceeding already instituted, may, at any time, propose in writing an offer of settlement.

(b) *Procedure.* An offer of settlement shall state that it is made pursuant to this section; shall recite or incorporate as a part of the offer the provisions of paragraphs (c) (4) and (5) of this section; shall be signed by the person making the offer, not by counsel; and shall be submitted to the interested division.

(c) *Consideration of offers of settlement.* (1) Offers of settlement shall be considered by the interested division when time, the nature of the proceedings, and the public interest permit.

(2) Where a hearing officer is assigned to a proceeding, the interested division and the party submitting the offer may request that the hearing officer express his or her views regarding the appropriateness of the offer of settlement. A request for the hearing officer to express his or her views on an offer of settlement or otherwise to participate in a settlement conference constitutes a waiver by the persons making the request of any right to claim bias or prejudgment by the hearing officer based on the views expressed.

(3) The interested division shall present the offer of settlement to the Commission with its recommendation, except that, if the division's recommendation is unfavorable, the offer shall not be presented to the Commission unless the person making the offer so requests.

(4) By submitting an offer of settlement, the person making the offer waives, subject to acceptance of the offer:

(i) All hearings pursuant to the statutory provisions under which the proceeding is to be or has been instituted;

(ii) The filing of proposed findings of fact and conclusions of law;

(iii) Proceedings before, and an initial decision by, a hearing officer;

(iv) All post-hearing procedures; and

(v) Judicial review by any court.

(5) By submitting an offer of settlement the person further waives:

(i) Such provisions of the Rules of Practice or other requirements of law as may be construed to prevent any member of the Commission's staff from participating in the preparation of, or advising the Commission as to, any order, opinion, finding of fact, or conclusion of law to be entered pursuant to the offer; and

(ii) Any right to claim bias or prejudgment by the Commission based on the consideration of or discussions concerning settlement of all or any part of the proceeding.

(6) If the Commission rejects the offer of settlement, the person making the offer shall be notified of the Commission's action and the offer of settlement shall be deemed withdrawn. The rejected offer shall not constitute a part of the record in any proceeding against the person making the offer, provided, however, that rejection of an offer of settlement does not affect the continued validity of waivers pursuant to paragraph (c)(5) of this section with respect to any discussions concerning the rejected offer of settlement.

(7) Final acceptance of any offer of settlement will occur only upon the

issuance of findings and an order by the Commission.

§ 201.250 Motion for summary disposition.

(a) After a respondent's answer has been filed and, in an enforcement or a disciplinary proceeding, documents have been made available to that respondent for inspection and copying pursuant to § 201.230, the respondent, or the interested division may make a motion for summary disposition of any or all allegations of the order instituting proceedings with respect to that respondent. If the interested division has not completed presentation of its case in chief, a motion for summary disposition shall be made only with leave of the hearing officer. The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noted pursuant to § 201.323.

(b) The hearing officer shall promptly grant or deny the motion for summary disposition or shall defer decision on the motion. The hearing officer may grant the motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law. If it appears that a party, for good cause shown, cannot present by affidavit prior to hearing facts essential to justify opposition to the motion, the hearing officer shall deny or defer the motion. A hearing officer's decision to deny leave to file a motion for summary disposition is not subject to interlocutory appeal.

(c) The motion for summary disposition, supporting memorandum of points and authorities, and any declarations, affidavits or attachments shall not exceed 35 pages in length.

Rules Regarding Hearings

§ 201.300 Hearings.

Hearings for the purpose of taking evidence shall be held only upon order of the Commission. All hearings shall be conducted in a fair, impartial, expeditious and orderly manner.

§ 201.301 Hearings to be public.

All hearings, except hearings on applications for confidential treatment filed pursuant to § 201.190, hearings held to consider a motion for a protective order pursuant to § 201.322, and hearings on *ex parte* application for a temporary cease-and-desist order, shall be public unless otherwise ordered by the Commission on its own motion or the motion of a party. No hearing shall be nonpublic where all respondents request that the hearing be made public.

§ 201.302 Record of hearings.

(a) *Recordation.* Unless ordered otherwise by the hearing officer or the Commission, all hearings shall be recorded and a written transcript thereof shall be prepared.

(b) *Availability of a transcript.* Transcripts of public hearings shall be available for purchase at prescribed rates. Transcripts of nonpublic proceedings, and transcripts subject to a protective order pursuant to § 201.322, shall be available for purchase only by parties; provided, however, that any person compelled to submit data or evidence in a hearing may purchase a copy of his or her own testimony.

(c) *Transcript correction.* Prior to the filing of post-hearing briefs or proposed findings and conclusions, or within such earlier time as directed by the Commission or the hearing officer, a party or witness may make a motion to correct the transcript. Proposed corrections of the transcript may be submitted to the hearing officer by stipulation pursuant to § 201.324, or by motion. Upon notice to all parties to the proceeding, the hearing officer may, by order, specify corrections to the transcript.

§ 201.310 Failure to appear at hearings: default.

Any person named in an order instituting proceedings as a person against whom findings may be made or sanctions imposed who fails to appear at a hearing of which he or she has been duly notified may be deemed to be in default pursuant to § 201.155(a). A party may make a motion to set aside a default pursuant to § 201.155(b).

§ 201.320 Evidence: admissibility.

The Commission or the hearing officer may receive relevant evidence and shall exclude all evidence that is irrelevant, immaterial or unduly repetitious.

§ 201.321 Evidence: objections and offers of proof.

(a) *Objections.* Objections to the admission or exclusion of evidence must be made on the record and shall be in short form, stating the grounds relied upon. Exceptions to any ruling thereon by the hearing officer need not be noted at the time of the ruling. Such exceptions will be deemed waived on appeal to the Commission, however, unless raised:

(1) Pursuant to interlocutory review in accordance with § 201.400;

(2) In a proposed finding or conclusion filed pursuant to § 201.340; or

(3) In a petition for Commission review of an initial decision filed in accordance with § 201.410.

(b) *Offers of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record. Excluded material shall be retained pursuant to § 201.350(b).

§ 201.322 Evidence: confidential information, protective orders.

(a) *Procedure.* In any proceeding as defined in § 201.101(a), a party, any person who is the owner, subject or creator of a document subject to subpoena or which may be introduced as evidence, or any witness who testifies at a hearing may file a motion requesting a protective order to limit from disclosure to other parties or to the public documents or testimony that contain confidential information. The motion should include a general summary or extract of the documents without revealing confidential details. If the movant seeks a protective order against disclosure to other parties as well as the public, copies of the documents shall not be served on other parties. Unless the documents are unavailable, the movant shall file for *in camera* inspection a sealed copy of the documents as to which the order is sought.

(b) *Basis for issuance.* Documents and testimony introduced in a public hearing are presumed to be public. A motion for a protective order shall be granted only upon a finding that the harm resulting from disclosure would outweigh the benefits of disclosure.

(c) *Requests for additional information supporting confidentiality.* A movant under paragraph (a) of this section may be required to furnish in writing additional information with respect to the grounds for confidentiality. Failure to supply the information so requested within five days from the date of receipt by the movant of a notice of the information required shall be deemed a waiver of the objection to public disclosure of that portion of the documents to which the additional information relates, unless the Commission or the hearing officer shall otherwise order for good cause shown at or before the expiration of such five-day period.

(d) *Confidentiality of documents pending decision.* Pending a determination of a motion under this section, the documents as to which confidential treatment is sought and any other documents that would reveal the confidential information in those documents shall be maintained under

seal and shall be disclosed only in accordance with orders of the Commission or the hearing officer. Any order issued in connection with a motion under this section shall be public unless the order would disclose information as to which a protective order has been granted, in which case that portion of the order that would reveal the protected information shall be nonpublic.

§ 201.323 Evidence: official notice.

Official notice may be taken of any material fact which might be judicially noticed by a district court of the United States, any matter in the public official records of the Commission, or any matter which is peculiarly within the knowledge of the Commission as an expert body. If official notice is requested or taken of a material fact not appearing in the evidence in the record, the parties, upon timely request, shall be afforded an opportunity to establish the contrary.

§ 201.324 Evidence: stipulations.

The parties may, by stipulation, at any stage of the proceeding agree upon any pertinent facts in the proceeding. A stipulation may be received in evidence and, when received, shall be binding on the parties to the stipulation.

§ 201.325 Evidence: presentation under oath or affirmation.

A witness at a hearing for the purpose of taking evidence shall testify under oath or affirmation.

§ 201.326 Evidence: presentation, rebuttal and cross-examination.

In any proceeding in which a hearing is required to be conducted on the record after opportunity for hearing in accord with 5 U.S.C. 556(a), a party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as, in the discretion of the Commission or the hearing officer, may be required for a full and true disclosure of the facts. The scope and form of evidence, rebuttal evidence, if any, and cross-examination, if any, in any other proceeding shall be determined by the Commission or the hearing officer in each proceeding.

§ 201.340 Proposed findings, conclusions and supporting briefs.

(a) *Opportunity to file.* Before an initial decision is issued, each party shall have an opportunity, reasonable in light of all the circumstances, to file in writing proposed findings and conclusions together with, or as a part of, its brief.

(b) *Procedure.* Proposed findings of fact must be supported by citations to specific portions of the record. If successive filings are directed, the proposed findings and conclusions of the party assigned to file first shall be set forth in serially numbered paragraphs, and any counter statement of proposed findings and conclusions must, in addition to any other matter, indicate those paragraphs of the proposals already filed as to which there is no dispute. A reply brief may be filed by the party assigned to file first, or, where simultaneous filings are directed, reply briefs may be filed by each party, within the period prescribed therefor by the hearing officer. No further briefs may be filed except with leave of the hearing officer.

(c) *Time for filing.* In any proceeding in which an initial decision is to be issued:

(1) At the end of each hearing, the hearing officer shall, by order, after consultation with the parties, prescribe the period within which proposed findings and conclusions and supporting briefs are to be filed. The party or parties directed to file first shall make its or their initial filing within 30 days of the end of the hearing unless the hearing officer, for good cause shown, permits a different period and sets forth in the order the reasons why the different period is necessary.

(2) The total period within which all such proposed findings and conclusions and supporting briefs and any counter statements of proposed findings and conclusions and reply briefs are to be filed shall be no longer than 90 days after the close of the hearing unless the hearing officer, for good cause shown, permits a different period and sets forth in an order the reasons why the different period is necessary.

§ 201.350 Record in proceedings before hearing officer; retention of documents; copies.

(a) *Contents of the record.* The record shall consist of:

(1) The order instituting proceedings, each notice of hearing and any amendments;

(2) Each application, motion, submission or other paper, and any amendments, motions, objections, and exceptions to or regarding them;

(3) Each stipulation, transcript of testimony and document or other item admitted into evidence;

(4) Each written communication accepted by the hearing officer pursuant to § 201.210;

(5) With respect to a request to disqualify a hearing officer or to allow the hearing officer's withdrawal under § 201.112, each affidavit or transcript of testimony taken and the decision made in connection with the request;

(6) All motions, briefs and other papers filed on interlocutory appeal;

(7) All proposed findings and conclusions;

(8) Each written order issued by the hearing officer or Commission; and

(9) Any other document or item accepted into the record by the hearing officer.

(b) *Retention of documents not admitted.* Any document offered in evidence but excluded, and any document marked for identification but not offered as an exhibit, shall not be considered a part of the record. The Secretary shall retain any such documents until the later of the date upon which a Commission order ending the proceeding becomes final, or the conclusion of any judicial review of the Commission's order.

(c) *Substitution of copies.* A true copy of a document may be substituted for any document in the record or any document retained pursuant to paragraph (b) of this section.

§ 201.351 Transmittal of documents to Secretary; record index; certification.

(a) *Transmittal from hearing officer to Secretary of partial record index.* The hearing officer may, at any time, transmit to the Secretary motions, exhibits or any other original documents filed with or accepted into evidence by the hearing officer, together with an index of such documents. The hearing officer, may, by order, require the interested division or other persons to assist in promptly transporting such documents from the hearing location to the Office of the Secretary.

(b) *Preparation, certification of record index.* Promptly after the close of the hearing, the hearing officer shall transmit to the Secretary an index of the originals of any motions, exhibits or any other documents filed with or accepted into evidence by the hearing officer that have not been previously transmitted to the Secretary, and the Secretary shall prepare a record index. Prior to issuance of an initial decision, or if no initial decision is to be prepared, within 30 days of the close of the hearing, the Secretary shall transmit the record index to the hearing officer and serve a copy of the record index on each party. Any person may file proposed corrections to the record index with the hearing officer within 15 days of service of the record index. The hearing officer shall, by order, direct whether any corrections to the record index shall be made. The Secretary shall make such corrections, if any, and issue a revised

record index. If an initial decision is to be issued, the initial decision shall include a certification that the record consists of the items set forth in the record index or revised record index issued by the Secretary.

(c) *Final transmittal of record items to the Secretary.* After the close of the hearing, the hearing officer shall transmit to the Secretary originals of any motions, exhibits or any other documents filed with, or accepted into evidence by, the hearing officer, or any other portions of the record that have not already been transmitted to the Secretary. Prior to service of the initial decision by the Secretary, or if no initial decision is to be issued, within 60 days of the close of the hearing, the Secretary shall inform the hearing officer if any portions of the record are not in the Secretary's custody.

§ 201.360 Initial decision of hearing officer.

(a) *When required.* Unless the Commission directs otherwise, the hearing officer shall prepare an initial decision in any proceeding in which the Commission directs a hearing officer to preside at a hearing, provided, however, that an initial decision may be waived by the parties with the consent of the hearing officer pursuant to § 201.202.

(b) *Content.* An initial decision shall include: findings and conclusions, and the reasons or basis therefor, as to all the material issues of fact, law or discretion presented on the record and the appropriate order, sanction, relief, or denial thereof. The initial decision shall also state the time period, not to exceed 21 days after service of the decision, except for good cause shown, within which a petition for review of the initial decision may be filed. The reasons for any extension of time shall be stated in the initial decision. The initial decision shall also include a statement that, as provided in paragraph (d) of this section:

(1) The initial decision shall become the final decision of the Commission as to each party unless a party files a petition for review of the initial decision or the Commission determines on its own initiative to review the initial decision as to a party; and

(2) If a party timely files a petition for review or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party.

(c) *Filing, service and publication.* The hearing officer shall file the initial decision with the Secretary. The Secretary shall promptly serve the initial decision upon the parties and shall promptly publish notice of the filing thereof in the *SEC News Digest.* Thereafter, the Secretary shall publish the initial decision in the *SEC Docket*; provided, however, that in nonpublic proceedings no notice shall be published unless the Commission otherwise directs.

(d) *When final.*

(1) Unless a party or an aggrieved person entitled to review files a petition for review in accordance with the time limit specified in the initial decision, or unless the Commission on its own initiative orders review pursuant to § 201.411, an initial decision shall become the final decision of the Commission.

(2) If a petition for review is timely filed by a party or an aggrieved person entitled to review, or if the Commission upon its own initiative has ordered review of a decision with respect to a party or a person aggrieved who would be entitled to review, the initial decision shall not become final as to that party or person.

(e) *Order of finality.* In the event that the initial decision becomes the final decision of the Commission with respect to a party, the Commission shall issue an order that the decision has become final as to that party. The order of finality shall state the date on which sanctions, if any, take effect. Notice of the order shall be published in the *SEC News Digest* and the *SEC Docket.*

Appeal to the Commission and Commission Review

§ 201.400 Interlocutory review.

(a) *Availability.* The Commission will not review a hearing officer's ruling prior to its consideration of the entire proceeding in the absence of extraordinary circumstances. The Commission may decline to consider a ruling certified by a hearing officer pursuant to paragraph (c) of this section if it determines that interlocutory review is not warranted or appropriate under the circumstances. The Commission may, at any time, on its own motion, direct that any matter be submitted to it for review.

(b) *Expedited consideration.* Interlocutory review of a hearing officer's ruling shall be expedited in every way, consistent with the Commission's other responsibilities.

(c) *Certification process.* A ruling submitted to the Commission for interlocutory review must be certified in writing by the hearing officer and shall specify the material relevant to the ruling involved. The hearing officer shall not certify a ruling unless:

(1) His or her ruling would compel testimony of Commission members, officers or employees or the production of documentary evidence in their custody; or

(2) Upon application by a party, within five days of the hearing officer's ruling, the hearing officer is of the opinion that:

(i) The ruling involves a controlling question of law as to which there is substantial ground for difference of opinion; and

(ii) An immediate review of the order may materially advance the completion of the proceeding.

(d) *Proceedings not stayed.* The filing of an application for review or the grant of review shall not stay proceedings before the hearing officer unless he or she, or the Commission, shall so order. The Commission will not consider the motion for a stay unless the motion shall have first been made to the hearing officer.

§ 201.401 Issuance of stays.

(a) *Procedure.* A request for a stay shall be made by written motion, filed pursuant to § 201.154, and served on all parties pursuant to § 201.150. The motion shall state the reasons for the relief requested and the facts relied upon, and, if the facts are subject to dispute, the motion shall be supported by affidavits or other sworn statements or copies thereof. Portions of the record relevant to the relief sought, if available to the movant, shall be filed with the motion. The Commission may issue a stay based on such motion or on its own motion.

(b) *Scope of relief.* The Commission may grant a stay in whole or in part, and may condition relief under this section upon such terms, or upon the implementation of such procedures, as it deems appropriate.

(c) *Stay of a Commission order.* A motion for a stay of a Commission order may be made by any person aggrieved thereby who would be entitled to review in a federal court of appeals. A motion seeking to stay the effectiveness of a Commission order pending judicial review may be made to the Commission at any time during which the Commission retains jurisdiction over the proceeding.

(d) *Stay of an action by a self-regulatory organization.*

(1) *Availability.* A motion for a stay of an action by a self-regulatory organization for which the Commission is the appropriate regulatory agency, for which action review may be sought pursuant to § 201.420, may be made by any person aggrieved thereby.

(2) *Summary entry.* A stay may be entered summarily, without notice and opportunity for hearing.

(3) *Expedited consideration.* Where the action complained of has already taken effect and the motion for stay is filed within 10 days of the effectiveness of the action, or where the action complained of, will, by its terms, take effect within five days of the filing of the motion for stay, the consideration of and decision on the motion for a stay shall be expedited in every way, consistent with the Commission's other responsibilities. Where consideration will be expedited, persons opposing the motion for a stay may file a statement in opposition within two days of service of the motion unless the Commission, by written order, shall specify a different period.

§ 201.410 Appeal of initial decisions by hearing officers.

(a) *Petition for review; when available.* In any proceeding in which an initial decision is made by a hearing officer, any party, and any other person who would have been entitled to judicial review of the decision entered therein if the Commission itself had made the decision, may file a petition for review of the decision with the Commission.

(b) *Procedure.* The petition for review of an initial decision shall be filed with the Commission within such time after service of the initial decision as prescribed by the hearing officer pursuant to § 201.360(b). The petition shall set forth the specific findings and conclusions of the initial decision as to which exception is taken, together with supporting reasons for each exception. Supporting reasons may be stated in summary form. Any exception to an initial decision not stated in the petition for review, or in a previously filed proposed finding made pursuant to § 201.340, may, at the discretion of the Commission, be deemed to have been waived by the petitioner.

(c) *Financial disclosure statement requirement.* Any person who files a petition for review of an initial decision that asserts that person's inability to pay either disgorgement, interest or a penalty shall file with the opening brief a sworn financial disclosure statement containing the information specified in § 201.630(b).

(d) *Opposition to review.* A party may seek leave to file a brief in opposition to a petition for review within five days of the filing of the petition. The Commission will grant leave, or order the filing of an opposition on its own motion, only if it determines that briefing will significantly aid the decisional process. A brief in opposition shall identify those issues which do not warrant consideration by the Commission and shall state succinctly the reasons therefore.

(e) *Prerequisite to judicial review.* Pursuant to Section 704 of the Administrative Procedure Act, 5 U.S.C. 704, a petition to the Commission for review of an initial decision is a prerequisite to the seeking of judicial review of a final order entered pursuant to such decision.

§ 201.411 Commission consideration of initial decisions by hearing officers.

(a) *Scope of review.* The Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, an initial decision by a hearing officer and may make any findings or conclusions that in its judgment are proper and on the basis of the record.

(b) *Standards for granting review pursuant to a petition for review.*

(1) *Mandatory review.* After a petition for review has been filed, the Commission shall review any initial decision that:

(i) Denies any request for action pursuant to Section 8(a) or Section 8(c) of the Securities Act of 1933, 15 U.S.C. 77h(a), (c), or the first sentence of Section 12(d) of the Exchange Act, 15 U.S.C. 78*l*(d);

(ii) Suspends trading in a security pursuant to Section 12(k) of the Exchange Act, 15 U.S.C. 78l(k); or

(iii) Is in a case of adjudication (as defined in 5 U.S.C. 551) not required to be determined on the record after notice and opportunity for hearing (except to the extent there is involved a matter described in 5 U.S.C. 554(a) (1) through (6)).

(2) *Discretionary review.* The Commission may decline to review any other decision. In determining whether to grant review, the Commission shall consider whether the petition for review makes a reasonable showing that:

(i) A prejudicial error was committed in the conduct of the proceeding; or

(ii) The decision embodies:

(A) A finding or conclusion of material fact that is clearly erroneous; or

(B) A conclusion of law that is erroneous; or

(C) An exercise of discretion or decision of law or policy that is important and that the Commission should review.

(c) *Commission review other than pursuant to a petition for review.* The Commission may, on its own initiative, order review of any initial decision, or a portion of any initial decision, within 21 days after the end of the period established for filing a petition for review pursuant to § 201.410(b) or any brief in opposition to a petition for review permitted pursuant to § 201.410(d). A party who does not intend to file a petition for review, and who desires the Commission's determination whether to order review on its own initiative to be made in a shorter time, may make a motion for an expedited decision, accompanied by a written statement that the party waives its right to file a petition for review. The vote of one member of the Commission, conveyed to the Secretary, shall be sufficient to bring a matter before the Commission for review.

(d) *Limitations on matters reviewed.* Review by the Commission of an initial decision shall be limited to the issues specified in the petition for review or the issues, if any, specified in the briefing schedule order issued pursuant to § 201.450(a). On notice to all parties, however, the Commission may, at any time prior to issuance of its decision, raise and determine any other matters that it deems material, with opportunity for oral or written argument thereon by the parties.

(e) *Summary affirmance.* The Commission may summarily affirm an initial decision based upon the petition for review and any response thereto, without further briefing, if it finds that no issue raised in the petition for review warrants further consideration by the Commission.

(f) *Failure to obtain a majority.* In the event a majority of participating Commissioners do not agree to a disposition on the merits, the initial decision shall be of no effect, and an order will be issued in accordance with this result.

§ 201.420 Appeal of determinations by self-regulatory organizations.

(a) *Application for review; when available.* An application for review by the Commission may be filed by any person who is aggrieved by a self-regulatory organization determination as to which a notice is required to be filed with the Commission pursuant to Section 19(d)(1) of the Exchange Act, 15 U.S.C. 78s(d)(1). Such determinations include any:

(1) Final disciplinary sanction;

(2) Denial or conditioning of membership or participation;

(3) Prohibition or limitation in respect to access to services offered by that self-regulatory organization or a member thereof; or

(4) Bar from association.

(b) *Procedure.* An application for review may be filed with the Commission pursuant to § 201.151 within 30 days after notice of the determination was filed with the Commission pursuant to Section

19(d)(1) of the Exchange Act, 15 U.S.C. 78s(d)(1), and received by the aggrieved person applying for review. The application shall be served by the applicant on the self-regulatory organization. The application shall identify the determination complained of, set forth in summary form a brief statement of alleged errors in the determination and supporting reasons therefor and state an address where the applicant can be served with the record index. The application shall be accompanied by the notice of appearance required by § 201.102(d).

(c) *Determination not stayed.* Filing an application for review with the Commission pursuant to paragraph (b) of this section shall not operate as a stay of the complained of determination made by the self-regulatory organization unless the Commission otherwise orders either pursuant to a motion filed in accordance with § 201.401 or on its own motion.

(d) *Certification of the record; service of the index.* Fourteen days after receipt of an application for review or a Commission order for review, the self-regulatory organization shall certify and file with the Commission one copy of the record upon which the action complained of was taken, and shall file with the Commission three copies of an index to such record, and shall serve upon each party one copy of the index.

§ 201.421 Commission consideration of determinations by self-regulatory organizations.

(a) *Commission review other than pursuant to a petition for review.* The Commission may, on its own initiative, order review of any determination by a self-regulatory organization that could be subject to an application for review pursuant to § 201.420(a) within 40 days after notice thereof was filed with the Commission pursuant to Section 19(d)(1) of the Exchange Act, 15 U.S.C. 78s(d)(1).

(b) *Supplemental briefing.* The Commission may at any time prior to issuance of its decision raise or consider any matter that it deems material, whether or not raised by the parties. Notice to the parties and an opportunity for supplemental briefing with respect to issues not briefed by the parties shall be given where the Commission believes that such briefing would significantly aid the decisional process.

§ 201.430 Appeal of actions made pursuant to delegated authority.

(a) *Scope of rule.* Any person aggrieved by an action made by authority delegated in §§ 200.30–1 through 200.30–17 of this chapter may seek review of the action pursuant to paragraph (b) of this section.

(b) *Procedure.*

(1) *Notice of intention to petition for review.* A party or any person aggrieved by an action made pursuant to delegated authority may seek Commission review of the action by filing a written notice of intention to petition for review within five days after actual notice to the party of the action or service of notice of the action pursuant to § 201.141(b), whichever is earlier. The notice shall identify the petitioner and the action complained of, and shall be accompanied by a notice of appearance pursuant to § 201.102(d).

(2) *Petition for review.* Within five days after the filing of a notice of intention to petition for review pursuant to paragraph (b)(1) of this section, the person seeking review shall file a petition for review containing a clear and concise statement of the issues to be reviewed and the reasons why review is appropriate. The petition shall include exceptions to any findings of fact or conclusions of law made, together with supporting reasons for such exceptions based on appropriate citations to such record as may exist. These reasons may be stated in summary form.

(c) *Prerequisite to judicial review.* Pursuant to Section 704 of the Administrative Procedure Act, 5 U.S.C. 704, a petition to the Commission for review of an action made by authority delegated in §§ 200.30–1 through 200.30–17 of this chapter is a prerequisite to the seeking of judicial review of a final order entered pursuant to such an action.

§ 201.431 Commission consideration of actions made pursuant to delegated authority.

(a) *Scope of review.* The Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, any action made pursuant to authority delegated in §§ 200.30–1 through 200.30–17 of this chapter.

(b) *Standards for granting review pursuant to a petition for review.*

(1) *Mandatory review.* After a petition for review has been filed, the Commission shall review any action that it would be required to review pursuant to § 201.411(b)(1) if the action was made as the initial decision of a hearing officer.

(2) *Discretionary review.* The Commission may decline to review any other action. In determining whether to grant review, the Commission shall consider the factors set forth in § 201.411(b)(2).

(c) *Commission review other than pursuant to a petition for review.* The Commission may, on its own initiative, order review of any action made pursuant to delegated authority at any time, provided, however, that where there are one or more parties to the matter, such review shall not be ordered more than ten days after the action. The vote of one member of the Commission, conveyed to the Secretary, shall be sufficient to bring a matter before the Commission for review.

(d) *Required items in an order for review.* In an order granting a petition for review or directing review on the Commission's own initiative, the Commission shall set forth the time within which any party or other person may file a statement in support of or in opposition to the action made by delegated authority and shall state whether a stay shall be granted, if none is in effect, or shall be continued, if in effect pursuant to paragraph (e) of this section.

(e) *Automatic stay of delegated action.* An action made pursuant to delegated authority shall have immediate effect and be deemed the action of the Commission. Upon filing with the Commission of a notice of intention to petition for review, or upon notice to the Secretary of the vote of a Commissioner that a matter be reviewed, an action made pursuant to delegated authority shall be stayed until the Commission orders otherwise, provided, however, there shall be no automatic stay of an action:

(1) To grant a stay of action by the Commission or a self-regulatory organization as authorized by 17 CFR 200.30–14(g) (5)–(6); or

(2) To commence a subpoena enforcement proceeding as authorized by 17 CFR 200.30–4(a)(10).

(f) *Effectiveness of stay or of Commission decision to modify or reverse a delegated action.* As against any person who shall have acted in reliance upon any action at a delegated level, any stay or any modification or reversal by the Commission of such action shall be effective only from the time such person receives actual notice of such stay, modification or reversal.

§ 201.450 Briefs filed with the Commission.

(a) *Briefing schedule order.* Other than review ordered pursuant to § 201.431, if review of a determination is mandated by statute, rule, or judicial order or the Commission determines to grant review as a matter of discretion, the Commission shall issue a briefing schedule order directing the party or parties to file opening briefs and

specifying particular issues, if any, as to which briefing should be limited or directed. Unless otherwise provided, opening briefs shall be filed within 40 days of the date of the briefing schedule order. Opposition briefs shall be filed within 30 days after the date opening briefs are due. Reply briefs shall be filed within 14 days after the date opposition briefs are due. No briefs in addition to those specified in the briefing schedule order may be filed except with leave of the Commission. The briefing schedule order shall be issued:

(1) At the time the Commission orders review on its own initiative pursuant to §§ 201.411 or 201.421, or orders interlocutory review on its own motion pursuant to § 201.400(a); or

(2) Within 21 days, or such longer time as provided by the Commission, after:

(i) The last day permitted for filing a petition for review pursuant to § 201.410(b) or a brief in opposition to a petition for review pursuant to § 201.410(d);

(ii) Receipt by the Commission of an index to the record of a determination of a self-regulatory organization filed pursuant to § 201.420(d);

(iii) Receipt by the Commission of the mandate of a court of appeals with respect to a judicial remand; or

(iv) Certification of a ruling for interlocutory review pursuant to § 201.400(c).

(b) *Contents of briefs.* Briefs shall be confined to the particular matters at issue. Each exception to the findings or conclusions being reviewed shall be stated succinctly. Exceptions shall be supported by citation to the relevant portions of the record, including references to the specific pages relied upon, and by concise argument including citation of such statutes, decisions and other authorities as may be relevant. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief, in an appendix thereto, or by citation to the record. Reply briefs shall be confined to matters in opposition briefs of other parties.

(c) *Length limitation.* Opening and opposition briefs shall not exceed 50 pages and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, table of authorities, and any addendum, except with leave of the Commission.

§ 201.451 Oral argument before the Commission.

(a) *Availability.* The Commission, on its own motion or the motion of a party or any other aggrieved person entitled to Commission review, may order oral argument with respect to any matter. Motions for oral argument with respect to whether to affirm all or part of an initial decision by a hearing officer shall be granted unless exceptional circumstances make oral argument impractical or inadvisable. The Commission will consider appeals, motions and other matters properly before it on the basis of the papers filed by the parties without oral argument unless the Commission determines that the presentation of facts and legal arguments in the briefs and record and the decisional process would be significantly aided by oral argument.

(b) *Procedure.* Requests for oral argument shall be made by separate motion accompanying the initial brief on the merits. The Commission shall issue an order as to whether oral argument is to be heard, and if so, the time and place therefor. The grant or denial of a motion for oral argument shall be made promptly after the filing of the last brief called for by the briefing schedule. If oral argument is granted, the time fixed for oral argument shall be changed only by written order of the Commission, for good cause shown. The order shall state at whose request the change is made and the reasons for any such change.

(c) *Time allowed.* Unless the Commission orders otherwise, not more than one half-hour per side will be allowed for oral argument. The Commission may, in its discretion, determine that several persons have a common interest, and that the interests represented will be considered a single side for purposes of allotting time for oral argument. Time will be divided equally among persons on a single side, provided, however, that by mutual agreement they may reallocate their time among themselves. A request for additional time must be made by motion filed reasonably in advance of the date fixed for argument.

(d) *Participation of Commissioners.* A member of the Commission who was not present at the oral argument may participate in the decision of the proceeding, provided that the member has reviewed the transcript of such argument prior to such participation. The decision shall state whether the required review was made.

§ 201.452 Additional evidence.

Upon its own motion or the motion of a party, the Commission may allow the submission of additional evidence. A party may file a motion for leave to adduce additional evidence at any time prior to issuance of a decision by the Commission. Such motion shall show with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously. The Commission may accept or hear additional evidence, may remand the proceeding to a self-regulatory organization, or may remand or refer the proceeding to a hearing officer for the taking of additional evidence, as appropriate.

§ 201.460 Record before the Commission.

The Commission shall determine each matter on the basis of the record.

(a) *Contents of the record.*

(1) In proceedings for final decision before the Commission other than those reviewing a determination by a self-regulatory organization, the record shall consist of:

(i) All items part of the record below in accordance with § 201.350;

(ii) Any petitions for review, cross-petitions or oppositions; and

(iii) All briefs, motions, submissions and other papers filed on appeal or review.

(2) In a proceeding for final decision before the Commission reviewing a determination by a self-regulatory organization, the record shall consist of:

(i) The record certified pursuant to § 201.420(d) by the self-regulatory organization;

(ii) Any application for review; and

(iii) Any submissions, moving papers, and briefs filed on appeal or review.

(b) *Transmittal of record to Commission.* Within 14 days after the last date set for filing briefs or such later date as the Commission directs, the Secretary shall transmit the record to the Commission.

(c) *Review of documents not admitted.* Any document offered in evidence but excluded by the hearing officer or the Commission and any document marked for identification but not offered as an exhibit shall not be considered a part of the record before the Commission on appeal but shall be transmitted to the Commission by the Secretary if so requested by the Commission. In the event that the Commission does not request the document, the Secretary shall retain the document not admitted into the record until the later of:

(1) The date upon which the Commission's order becomes final, or

(2) The conclusion of any judicial review of that order.

§ 201.470 Reconsideration.

(a) *Scope of rule.* A party or any person aggrieved by a determination in a proceeding may file a motion for reconsideration of a final order issued by the Commission.

(b) *Procedure.* A motion for reconsideration shall be filed within 10 days after service of the order complained of on each party, or within such time as the Commission may prescribe upon motion of the person seeking reconsideration, if made within the foregoing 10-day period. The motion for reconsideration shall briefly and specifically state the matters of record alleged to have been erroneously decided, the grounds relied upon, and the relief sought. Except with permission of the Commission, a motion for reconsideration shall not exceed 15 pages. No responses to a motion for reconsideration shall be filed unless requested by the Commission.

§ 201.490 Receipt of petitions for judicial review pursuant to 28 U.S.C. 2112(a)(1).

The Commission officer and office designated pursuant to 28 U.S.C. 2112(a)(1) to receive copies of petitions for review of Commission orders from the persons instituting review in a court of appeals, are the Secretary and the Office of the Secretary at the Commission's Headquarters. Ten copies of each petition shall be submitted. Each copy shall state on its face that it is being submitted to the Commission pursuant to 28 U.S.C. 2112 by the person or persons who filed the petition in the court of appeals.

Rules Relating to Temporary Orders and Suspensions

§ 201.500 Expedited consideration of proceedings.

Consistent with the Commission's or the hearing officer's other responsibilities, every hearing shall be held and every decision shall be rendered at the earliest possible time in connection with:

(a) An application for a temporary sanction, as defined in § 201.101(a), or a proceeding to determine whether a temporary sanction should be made permanent;

(b) A motion or application to review an order suspending temporarily the effectiveness of an exemption from registration pursuant to Regulations A, B, E or F under the Securities Act, §§ 230.258, 230.336, 230.610 or 230.656 of this chapter; or,

(c) A motion to or petition to review an order suspending temporarily the privilege of appearing before the Commission under § 201.102(e)(3), or a sanction under § 201.180(a)(1).

§ 201.510 Temporary cease-and-desist orders: application process.

(a) *Procedure.* A request for entry of a temporary cease-and-desist order shall be made by application filed by the Division of Enforcement. The application shall set forth the statutory provision or rule that each respondent is alleged to have violated; the temporary relief sought against each respondent, including whether the respondent would be required to take action to prevent the dissipation or conversion of assets; and whether the relief is sought *ex parte.*

(b) *Accompanying documents.* The application shall be accompanied by a declaration of facts signed by a person with knowledge of the facts contained therein, a memorandum of points and authorities, a proposed order imposing the temporary relief sought, and, unless relief is sought *ex parte,* a proposed notice of hearing and order to show cause whether the temporary relief should be imposed. If a proceeding for a permanent cease-and-desist order has not already been commenced, a proposed order instituting proceedings to determine whether a permanent cease-and-desist order should be imposed shall also be filed with the application.

(c) *With whom filed.* The application shall be filed with the Secretary or, if the Secretary is unavailable, with the duty officer. In no event shall an application be filed with an administrative law judge.

(d) *Record of proceedings.* Hearings, including *ex parte* presentations made by the Division of Enforcement pursuant to § 201.513, shall be recorded or transcribed pursuant to § 201.302.

§ 201.511 Temporary cease-and-desist orders: notice; procedures for hearing.

(a) *Notice: how given.* Notice of an application for a temporary cease-and-desist order shall be made by serving a notice of hearing and order to show cause pursuant to § 201.141(b) or, where timely service of a notice of hearing pursuant to § 201.141(b) is not practicable, by any other means reasonably calculated to give actual notice that a hearing will be held, including telephonic notification of the general subject matter, time, and place of the hearing. If an application is made *ex parte,* pursuant to § 201.513, no notice to a respondent need be given prior to the Commission's consideration of the application.

(b) *Hearing before the Commission.* Except as provided in paragraph (d) of this section, hearings on an application for a temporary cease-and-desist order shall be held before the Commission.

(c) *Presiding officer: designation.* The Chairman shall preside or designate a Commissioner to preside at the hearing. If the Chairman is absent or unavailable at the time of hearing and no other Commissioner has been designated to preside, the duty officer on the day the hearing begins shall preside or designate another Commissioner to preside.

(d) *Procedure at hearing.* (1) The presiding officer shall have all those powers of a hearing officer set forth in § 201.111 and shall rule on the admissibility of evidence and other procedural matters, including, but not limited to whether oral testimony will be heard; the time allowed each party for the submission of evidence or argument; and whether post-hearing submission of briefs, proposed findings of fact and conclusions of law will be permitted and if so, the procedures for submission; provided, however, that the person presiding may consult with other Commissioners participating in the hearing on these or any other question of procedure.

(2) Each Commissioner present at the hearing shall be afforded a reasonable opportunity to ask questions of witnesses, if any, or of counsel.

(3) A party or witness may participate by telephone. Alternative means of remote access, including a video link, shall be permitted in the Commission's discretion. Factors the Commission may consider in determining whether to permit alternative means of remote access include, but are not limited to, whether allowing an alternative means of access will delay the hearing, whether the alternative means is reliable, and whether the party proposing its use has made arrangements to pay for its cost.

(4) After a hearing has begun, the Commission may, on its own motion, or the motion of a party, assign a hearing officer to preside at the taking of oral testimony or other evidence and to certify the record of such testimony or other evidence to the Commission within a fixed period of time. No recommended or initial decision shall be made by such a hearing officer.

§ 201.512 Temporary cease-and-desist orders: issuance after notice and opportunity for hearing.

(a) *Basis for issuance.* A temporary cease-and-desist order shall be issued only if the Commission determines that the alleged violation or threatened violation specified in an order instituting proceedings whether to enter a permanent cease-and-desist order pursuant to Securities Act Section 8A(a), 15 U.S.C. 77h–1(a), Exchange Act Section 21C(a), 15 U.S.C. 78u–3(a), Investment Company Act Section 9(f)(1), 15 U.S.C. 80a–9(f)(1), or Investment Advisers Act Section 203(k)(1), 15 U.S.C. 80b–3(k)(1), or the continuation thereof, is likely to result

in significant dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest, including, but not limited to, losses to the Securities Investor Protection Corporation, prior to the completion of proceedings on the permanent cease-and-desist order.

(b) *Content, scope and form of order.* Every temporary cease-and-desist order granted shall:

(1) Describe the basis for its issuance, including the alleged or threatened violations and the harm that is likely to result without the issuance of an order;

(2) Describe in reasonable detail, and not by reference to the order instituting proceedings or any other document, the act or acts the respondent is to take or refrain from taking; and

(3) Be indorsed with the date and hour of issuance.

(c) *Effective upon service.* A temporary cease-and-desist order is effective upon service upon the respondent.

(d) *Service: how made.* Service of a temporary cease-and-desist order shall be made pursuant to § 201.141(a). The person who serves the order shall promptly file a declaration of service identifying the person served, the method of service, the date of service, the address to which service was made and the person who made service; provided, however, failure to file such a declaration shall have no effect on the validity of the service.

(e) C*ommission review.* At any time after the respondent has been served with a temporary cease-and-desist order, the respondent may apply to the Commission to have the order set aside, limited or suspended. The application shall set forth with specificity the facts that support the request.

§ 201.513 Temporary cease-and-desist orders: issuance without prior notice and opportunity for hearing.

In addition to the requirements for issuance of a temporary cease-and-desist order set forth in § 201.512, the following requirements shall apply if a temporary cease-and-desist order is to be entered without prior notice and opportunity for hearing:

(a) *Basis for issuance without prior notice and opportunity for hearing.* A temporary cease-and-desist order may be issued without notice and opportunity for hearing only if the Commission determines, from specific facts in the record of the proceeding, that notice and hearing prior to entry of an order would be impracticable or contrary to the public interest.

(b) *Content of the order.* An *ex parte* temporary cease-and-desist order shall state specifically why notice and hearing would have been impracticable or contrary to the public interest.

(c) *Hearing before the Commission.* If a respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may apply to the Commission to have the order set aside, limited, or suspended, and if the application is made within 10 days after the date on which the order was served, may request a hearing on such application. The Commission shall hold a hearing and render a decision on the respondent's application at the earliest possible time. The hearing shall begin within two days of the filing of the application unless the applicant consents to a longer period or the Commission, by order, for good cause shown, sets a later date. The Commission shall render a decision on the application within five calendar days of its filing, provided, however, that the Commission, by order, for good cause shown, may extend the time within which a decision may be rendered for a single period of five calendar days, or such longer time as consented to by the applicant. If the Commission does not render its decision within 10 days of the respondent's application or such longer time as consented to by the applicant, the temporary order shall be suspended until a decision is rendered.

(d) *Presiding officer, procedure at hearing.* Procedures with respect to the selection of a presiding officer and the conduct of the hearing shall be in accordance with § 201.511.

§ 201.514 Temporary cease-and-desist orders: judicial review; duration.

(a) *Availability of judicial review.* Judicial review of a temporary cease-and-desist order shall be available as provided in Section 8A(d)(2) of the Securities Act, 15 U.S.C. 77h–1(d)(2), Section 21C(d)(2) of the Exchange Act, 15 U.S.C. 78u–3(d)(2), Section 9(f)(4)(B) of the Investment Company Act, 15 U.S.C. 80a–9(f)(4)(B), or Section 203(k)(4)(B) of the Investment Advisers Act, 15 U.S.C. 80b–3(k)(4)(B).

(b) *Duration.* Unless set aside, limited, or suspended, either by order of the Commission, a court of competent jurisdiction, or a hearing officer acting pursuant to § 201.531, or by operation of § 201.513, a temporary cease-and-desist order shall remain effective and enforceable until the earlier of:

(1) The completion of the proceedings whether a permanent order shall be entered; or

(2) 180 days, or such longer time as consented to by the respondent, after issuance of a briefing schedule order pursuant to § 201.540(b), if an initial decision whether a permanent order should be entered is appealed.

§ 201.520 Suspension of registration of brokers, dealers, or other Exchange Act-registered entities: application.

(a) *Procedure.* A request for suspension of a registered broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or transfer agent pending a final determination whether the registration shall be revoked shall be made by application filed by the Division of Enforcement. The application shall set forth the statutory provision or rule that each respondent is alleged to have violated and the temporary suspension sought as to each respondent.

(b) *Accompanying documents.* The application shall be accompanied by a declaration of facts signed by a person with knowledge of the facts contained therein, a memorandum of points and authorities, a proposed order imposing the temporary suspension of registration sought, and a proposed notice of hearing and order to show cause whether the temporary suspension of registration should be imposed. If a proceeding to determine whether to revoke the registration permanently has not already been commenced, a proposed order instituting proceedings to determine whether a permanent sanction should be imposed shall also be filed with the application.

(c) *With whom filed.* The application shall be filed with the Secretary or, if the Secretary is unavailable, with the duty officer. In no event shall an application be filed with an administrative law judge.

(d) *Record of hearings.* All hearings shall be recorded or transcribed pursuant to § 201.302.

§ 201.521 Suspension of registration of brokers, dealers, or other Exchange Act-registered entities: notice and opportunity for hearing on application.

(a) *How given.* Notice of an application to suspend a registration pursuant to § 201.520 shall be made by serving a notice of hearing and order to show cause pursuant to § 201.141(b) or, where timely service of a notice of hearing pursuant to § 201.141(b) is not practicable, by any other means reasonably calculated to give actual notice that a hearing will be held, including telephonic notification of the general subject matter, time, and place of the hearing.

(b) *Hearing: before whom held.* Except as provided in paragraph (d) of this section, hearings on an application to

suspend a registration pursuant to § 201.520 shall be held before the Commission.

(c) *Presiding officer: designation.* The Chairman shall preside or designate a Commissioner to preside at the hearing. If the Chairman is absent or unavailable at the time of hearing and no other Commissioner has been designated to preside, the duty officer on the day the hearing begins shall preside or designate another Commissioner to preside.

(d) *Procedure at hearing.* (1) The presiding officer shall have all those powers of a hearing officer set forth in § 201.111 and shall rule on the admissibility of evidence and other procedural matters, including, but not limited to whether oral testimony will be heard; the time allowed each party for the submission of evidence or argument; and whether post-hearing submission of briefs, proposed findings of fact and conclusions of law will be permitted and if so, the procedures for submission; provided, however, that the person presiding may consult with other Commissioners participating in the hearing on these or any other question of procedure.

(2) Each Commissioner present at the hearing shall be afforded a reasonable opportunity to ask questions of witnesses, if any, or counsel.

(3) A party or witness may participate by telephone. Alternative means of remote access, including a video link, shall be permitted in the Commission's discretion. Factors the Commission may consider in determining whether to permit alternative means of remote access include, but are not limited to, whether allowing an alternative means of access will delay the hearing, whether the alternative means is reliable, and whether the party proposing its use has made arrangements to pay for its cost.

(4) After a hearing has begun, the Commission may, on its own motion or the motion of a party, assign a hearing officer to preside at the taking of oral testimony or other evidence and to certify the record of such testimony or other evidence to the Commission within a fixed period of time. No recommended or initial decision shall be made.

§ 201.522 Suspension of registration of brokers, dealers, or other Exchange Act-registered entities: issuance and review of order.

(a) *Basis for issuance.* An order suspending a registration, pending final determination as to whether the registration shall be revoked shall be issued only if the Commission finds that the suspension is necessary or appropriate in the public interest or for the protection of investors.

(b) *Content, scope and form of order.* Each order suspending a registration shall:

(1) Describe the basis for its issuance, including the alleged or threatened violations and the harm that is likely to result without the issuance of an order;

(2) Describe in reasonable detail, and not by reference to the order instituting proceedings or any other document, the act or acts the respondent is to take or refrain from taking; and

(3) Be indorsed with the date and hour of issuance.

(c) *Effective upon service.* An order suspending a registration is effective upon service upon the respondent.

(d) *Service: how made.* Service of an order suspending a registration shall be made pursuant to § 201.141(a). The person who serves the order shall promptly file a declaration of service identifying the person served, the method of service, the date of service, the address to which service was made and the person who made service; provided, however, failure to file such a declaration shall have no effect on the validity of the service.

(e) *Commission review.* At any time after the respondent has been served with an order suspending a registration, the respondent may apply to the Commission or the hearing officer to have the order set aside, limited, or suspended. The application shall set forth with specificity the facts that support the request.

§ 201.523 [Reserved].

§ 201.524 Suspension of registrations: duration.

Unless set aside, limited or suspended by order of the Commission, a court of competent jurisdiction, or a hearing officer acting pursuant to § 201.531, an order suspending a registration shall remain effective and enforceable until the earlier of:

(a) The completion of the proceedings whether the registration shall be permanently revoked; or

(b) 180 days, or such longer time as consented to by the respondent, after issuance of a briefing schedule order pursuant to § 201.540(b), if an initial decision whether the registration shall be permanently revoked is appealed.

§ 201.530 Initial decision on permanent order: timing for submitting proposed findings and preparation of decision.

Unless otherwise ordered by the Commission or hearing officer, if a temporary cease-and-desist order or suspension of registration order is in effect, the following time limits shall apply to preparation of an initial decision as to whether such order should be made permanent:

(a) Proposed findings and conclusions and briefs in support thereof shall be filed 30 days after the close of the hearing;

(b) The record in the proceedings shall be served by the Secretary upon the hearing officer three days after the date for the filing of the last brief called for by the hearing officer; and

(c) The initial decision shall be filed with the Secretary at the earliest possible time, but in no event more than 30 days after service of the record, unless the hearing officer, by order, shall extend the time for good cause shown for a period not to exceed 30 days.

§ 201.531 Initial decision on permanent order: effect on temporary order.

(a) *Specification of permanent sanction.* If, at the time an initial decision is issued, a temporary sanction is in effect as to any respondent, the initial decision shall specify:

(1) Which terms or conditions of a temporary cease-and-desist order, if any, shall become permanent; and

(2) Whether a temporary suspension of a respondent's registration, if any, shall be made a permanent revocation of registration.

(b) *Modification of temporary order.* If any temporary sanction shall not become permanent under the terms of the initial decision, the hearing officer shall issue a separate order setting aside, limiting or suspending the temporary sanction then in effect in accordance with the terms of the initial decision. The hearing officer shall decline to suspend a term or condition of a temporary cease-and-desist order if it is found that the continued effectiveness of such term or condition is necessary to effectuate any term of the relief ordered in the initial decision, including the payment of disgorgement, interest or penalties. An order modifying temporary sanctions shall be effective 14 days after service. Within one week of service of the order modifying temporary sanctions any party may seek a stay or modification of the order from the Commission pursuant to § 201.401.

§ 201.540 Appeal and Commission review of initial decision making a temporary order permanent.

(a) *Petition for review.* Any person who seeks Commission review of an initial decision as to whether a temporary sanction shall be made permanent shall file a petition for review pursuant to § 201.410, provided,

however, that the petition must be filed within 10 days after service of the initial decision.

(b) *Review procedure.* If the Commission determines to grant or order review, it shall issue a briefing schedule order pursuant to § 201.450. Unless otherwise ordered by the Commission, opening briefs shall be filed within 21 days of the order granting or ordering review, and opposition briefs shall be filed within 14 days after opening briefs are filed. Reply briefs shall be filed within seven days after opposition briefs are filed. Oral argument, if granted by the Commission, shall be held within 90 days of the issuance of the briefing schedule order.

§ 201.550 Summary suspensions pursuant to Exchange Act Section 12(k)(1)(A).

(a) *Petition for termination of suspension.* Any person adversely affected by a suspension pursuant to Section 12(k)(1)(A) of the Exchange Act, 15 U.S.C. 78*l*(k)(1)(A), who desires to show that such suspension is not necessary in the public interest or for the protection of investors may file a sworn petition with the Secretary, requesting that the suspension be terminated. The petition shall set forth the reasons why the petitioner believes that the suspension of trading should not continue and state with particularity the facts upon which the petitioner relies.

(b) *Commission consideration of a petition.* The Commission, in its discretion, may schedule a hearing on the matter, request additional written submissions, or decide the matter on the facts presented in the petition and any other relevant facts known to the Commission. If the petitioner fails to cooperate with, obstructs, or refuses to permit the making of an examination by the Commission, such conduct shall be grounds to deny the petition.

Rules Regarding Disgorgement and Penalty Payments

§ 201.600 Interest on sums disgorged.

(a) *Interest required.* Prejudgment interest shall be due on any sum required to be paid pursuant to an order of disgorgement. The disgorgement order shall specify each violation that forms the basis for the disgorgement ordered; the date which, for purposes of calculating disgorgement, each such violation was deemed to have occurred; the amount to be disgorged for each such violation; and the total sum to be disgorged. Prejudgment interest shall be due from the first day of the month following each such violation through the last day of the month preceding the month in which payment of disgorgement is made. The order shall state the amount of prejudgment interest owed as of the date of the disgorgement order and that interest shall continue to accrue on all funds owed until they are paid.

(b) *Rate of interest.* Interest on the sum to be disgorged shall be computed at the underpayment rate of interest established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), and shall be compounded quarterly. The Commission or the hearing officer may, by order, specify a lower rate of prejudgment interest as to any funds which the respondent has placed in an escrow or otherwise guaranteed for payment of disgorgement upon a final determination of the respondent's liability. Escrow and other guarantee arrangements must be approved by the Commission or the hearing officer prior to entry of the disgorgement order.

§ 201.601 Prompt payment of disgorgement, interest and penalties.

(a) *Timing of payments.* Unless otherwise provided, funds due pursuant to an order by the Commission requiring the payment of disgorgement, interest or penalties shall be paid no later than 21 days after service of the order, and funds due pursuant to an order by a hearing officer shall be paid on the first day after the order becomes final pursuant to § 201.360.

(b) *Stays.* A stay of any order requiring the payment of disgorgement, interest or penalties may be sought at any time pursuant to § 201.401.

§ 201.610 Submission of proposed plan of disgorgement.

The Commission or the hearing officer may, at any time, order any party to submit a plan for the administration and distribution of disgorgement funds. Unless ordered otherwise, the Division of Enforcement shall submit a proposed plan no later than 60 days after funds or other assets have been turned over by the respondent pursuant to a Commission disgorgement order and any appeals of the disgorgement order have been waived or completed, or appeal is no longer available.

§ 201.611 Contents of plan of disgorgement; provisions for payment.

(a) *Required plan elements.* Unless otherwise ordered, a plan for the administration of a disgorgement fund shall include the following elements:

(1) Procedures for the receipt of additional funds, including the specification of an account where funds will be held and the instruments in which the funds may be invested;

(2) Specification of categories of persons potentially eligible to receive proceeds from the fund;

(3) Procedure for providing notice to such persons of the existence of the fund and their potential eligibility to receive proceeds of the fund;

(4) Procedures for making and approving claims, procedures for handling disputed claims and a cut-off date for the making of claims;

(5) A proposed date for the termination of the fund, including provision for the disposition of any funds not otherwise distributed;

(6) Procedures for the administration of the fund, including selection, compensation and, as necessary, indemnification of a fund administrator to oversee the fund, process claims, prepare accountings, file tax returns and, subject to the approval of the Commission, make distributions from the fund to investors; and

(7) Such other provisions as the Commission or the hearing officer may require.

(b) *Payment to registry of the court or court-appointed receiver.* Subject to such conditions as the Commission or the hearing officer shall deem appropriate, a plan of disgorgement may provide for payment of disgorgement funds into a court registry or to a court-appointed receiver in any case pending in federal or state court against a respondent or any other person based upon a complaint alleging violations arising from the same or substantially similar facts as those alleged in the Commission's order instituting proceedings.

(c) *Payment to the United States Treasury under certain circumstances.* When, in the opinion of the Commission or the hearing officer, the cost of administering a plan of disgorgement relative to the value of the available disgorgement funds and the number of potential claimants would not justify distribution of the disgorgement funds to injured investors, the plan may provide that the funds shall be paid directly to the general fund of the United States Treasury.

§ 201.612 Notice of proposed plan of disgorgement and opportunity for comment by non-parties.

Notice of a proposed plan of disgorgement shall be published in the *SEC News Digest,* in the *SEC Docket,* and in such other publications as the Commission or the hearing officer may require. The notice shall specify how copies of the proposed plan may be obtained and shall state that persons desiring to comment on the proposed

plan may submit their views, in writing, to the Commission.

§ 201.613 Order approving, modifying or disapproving proposed plan of disgorgement.

At any time more than 30 days after publication of notice of a proposed plan of disgorgement, the hearing officer or the Commission shall, by order, approve, approve with modifications, or disapprove the proposed plan. In the discretion of the Commission or the hearing officer, a proposed plan of disgorgement that is substantially modified prior to adoption may be republished for an additional comment period pursuant to § 201.612. The order approving or disapproving the plan should be entered within 30 days after the end of the final period allowed for comments on the proposed plan unless the Commission or the hearing officer, by written order, allows a longer period for good cause shown.

§ 201.614 Administration of plan of disgorgement.

(a) *Appointment and removal of administrator.* The Commission or the hearing officer shall have discretion to appoint any person, including a Commission employee, as administrator of a plan of disgorgement and to delegate to that person responsibility for administering the plan. A respondent may be required or permitted to administer or assist in administering a plan of disgorgement, subject to such terms and conditions as the Commission or the hearing officer deem appropriate to ensure the proper distribution of funds. An administrator may be removed at any time by order of the Commission or hearing officer.

(b) *Administrator to post bond.* If the administrator is not a Commission employee, the administrator shall be required to obtain a bond in the manner prescribed by 11 U.S.C. 322, in an amount to be approved by the Commission. The cost of the bond may be paid for as a cost of administration. The Commission may waive posting of a bond for good cause shown.

(c) *Administrator's fees.* If the administrator is a Commission employee, no fee shall be paid to the administrator for his or her services. If the administrator is not a Commission employee, he or she may file an application for fees for completed services, and upon approval by the Commission or a hearing officer, may be paid a reasonable fee for those services. Any objections thereto shall be filed within 21 days of service of the application on the parties.

(d) *Source of funds.* Unless otherwise ordered, fees and other expenses of administering the plan of disgorgement shall be paid first from the interest earned on disgorged funds, and if the interest is not sufficient, then from the corpus.

(e) *Accountings.* During the first 10 days of each calendar quarter, or as otherwise directed by the Commission or the hearing officer, the administrator shall file an accounting of all monies earned or received and all monies spent in connection with the administration of the plan of disgorgement. A final accounting shall be submitted for approval of the Commission or hearing officer prior to discharge of the administrator and cancellation of the administrator's bond, if any.

(f) *Amendment.* A plan may be amended upon motion by any party or the plan administrator or upon the Commission's or hearing officer's own motion.

§ 201.620 Right to challenge order of disgorgement.

Other than in connection with the opportunity to submit comments as provided in § 201.612, no person shall be granted leave to intervene or to participate in a proceeding or otherwise to appear to challenge an order of disgorgement; or an order approving, approving with modifications, or disapproving a plan of disgorgement; or any determination relating to a plan of disgorgement based solely upon that person's eligibility or potential eligibility to participate in a disgorgement fund or based upon any private right of action such person may have against any person who is also a respondent in an enforcement proceeding.

§ 201.630 Inability to pay disgorgement, interest or penalties.

(a) *Generally.* In any proceeding in which an order requiring payment of disgorgement, interest or penalties may be entered, a respondent may present evidence of an inability to pay disgorgement, interest or a penalty. The Commission may, in its discretion, or the hearing officer may, in his or her discretion, consider evidence concerning ability to pay in determining whether disgorgement, interest or a penalty is in the public interest.

(b) *Financial disclosure statement.* Any respondent who asserts an inability to pay disgorgement, interest or penalties may be required to file a sworn financial disclosure statement and to keep the statement current. The financial statement shall show the respondent's assets, liabilities, income or other funds received and expenses or other payments, from the date of the first violation alleged against that respondent in the order instituting proceedings, or such later date as specified by the Commission or a hearing officer, to the date of the order requiring the disclosure statement to be filed. By order, the Commission or the hearing officer may prescribe the use of the Disclosure of Assets and Financial Information Form (*see* Form D–A at § 209.1 of this chapter) or any other form, may specify other time periods for which disclosure is required, and may require such other information as deemed necessary to evaluate a claim of inability to pay.

(c) *Confidentiality.* Any respondent submitting financial information pursuant to this section or § 201.410(c) may make a motion, pursuant to § 201.322, for the issuance of a protective order against disclosure of the information submitted to the public or to any parties other than the Division of Enforcement. Prior to a ruling on the motion, no party receiving information as to which a motion for a protective order has been made may transfer or convey the information to any other person without the prior permission of the Commission or the hearing officer.

(d) *Service required.* Notwithstanding any provision of § 201.322, a copy of the financial disclosure statement shall be served on the Division of Enforcement.

(e) *Failure to file required financial information: sanction.* Any respondent who, after making a claim of inability to pay either disgorgement, interest or a penalty, fails to file a financial disclosure statement when such a filing has been ordered or is required by rule may, in the discretion of the Commission or the hearing officer, be deemed to have waived the claim of inability to pay. No sanction pursuant to §§ 201.155 or 201.180 shall be imposed for a failure to file such a statement.

Informal Procedures and Supplementary Information Concerning Adjudicatory Proceedings

§ 201.900 Informal Procedures and Supplementary Information Concerning Adjudicatory Proceedings.

(a) *Guidelines for the timely completion of proceedings.*

(1) Timely resolution of adjudicatory proceedings is one factor in assessing the effectiveness of the adjudicatory program in protecting investors, promoting public confidence in the securities markets and assuring respondents a fair hearing. Establishment of guidelines for the timely completion of key phases of contested administrative proceedings

provides a standard for both the Commission and the public to gauge the Commission's adjudicatory program on this criterion. The Commission has directed that, to the extent possible:

(i) An administrative law judge's initial decision should be filed with the Secretary within 10 months of issuance of the order instituting proceedings.

(ii) A decision by the Commission on review of an interlocutory matter should be completed within 45 days of the date set for filing the final brief on the matter submitted for review.

(iii) A decision by the Commission on a motion to stay a decision that has already taken effect or that will take effect within five days of the filing of the motion, should be issued within five days of the date set for filing of the opposition to the motion for a stay. If the decision complained of has not taken effect, the Commission's decision should be issued within 45 days of the date set for filing of the opposition to the motion for a stay.

(iv) A decision by the Commission with respect to an appeal from the initial decision of a hearing officer, a review of a determination by a self-regulatory organization, or a remand of a prior Commission decision by a court of appeals should be issued within 11 months from the date the petition for review, application for review, or mandate of the court is filed.

(2) The guidelines in this paragraph (a) do not create a requirement that each portion of a proceeding or the entire proceeding be completed within the periods described. Among other reasons, a proceeding at either the hearing stage or on review by the Commission may require additional time because it is unusually complex or because the record is exceptionally long. In addition, fairness is enhanced if the Commission's deliberative process is not constrained by an inflexible schedule. In some proceedings, deliberation may be delayed by the need to consider more urgent matters, to permit the preparation of dissenting opinions, or for other good cause. The guidelines will be used by the Commission as one of several criteria in monitoring and evaluating its adjudicatory program. The guidelines will be examined periodically, and, if necessary, readjusted in light of changes in the pending caseload and the available level of staff resources.

(b) *Reports to the Commission on pending cases.* The administrative law judges, the Secretary and the General Counsel have each been delegated authority to issue certain orders or adjudicate certain proceedings. *See* 17 CFR 200.30–1, *et seq.* Proceedings are also assigned to the General Counsel for the preparation of a proposed order or opinion which will then be recommended to the Commission for consideration. In order to improve accountability by and to the Commission for management of the docket, the Commission has directed that confidential status reports with respect to all filed adjudicatory proceedings shall be made periodically to the Commission. These reports will be made through the Secretary, with a minimum frequency established by the Commission. In connection with these periodic reports, if a proceeding assigned to an administrative law judge or pending before the Commission has not been concluded within 30 days of the guidelines established in paragraph (a) of this section, the Chief Administrative Law Judge or the General Counsel, respectively, shall specifically apprise the Commission of that fact, and shall describe the procedural posture of the case, project an estimated date for conclusion of the proceeding, and provide such other information as is necessary to enable the Commission to determine whether additional steps are necessary to reach a fair and timely resolution of the matter.

(c) *Publication of information concerning the pending case docket.* Ongoing disclosure of information about the adjudication program caseload increases awareness of the importance of the program, facilitates oversight of the program and promotes confidence in the efficiency and fairness of the program by investors, securities industry participants, self-regulatory organizations and other members of the public. The Commission has directed the Secretary to publish in the *SEC Docket* in the first and seventh months of each fiscal year summary statistical information about the status of pending adjudicatory proceedings and changes in the Commission's caseload over the prior six months. The report will include the number of cases pending before the administrative law judges and the Commission at the beginning and end of the six-month period. The report will also show increases in the caseload arising from new cases being instituted, appealed or remanded to the Commission and decreases in the caseload arising from the disposition of proceedings by issuance of initial decisions, issuance of final decisions issued on appeal of initial decisions, other dispositions of appeals of initial decisions, final decisions on review of self-regulatory organization determinations, other dispositions on review of self-regulatory organization determinations, and decisions with respect to stays or interlocutory motions. For each category of decision, the report shall also show the median age of the cases at the time of the decision and the number of cases decided within the guidelines for the timely completion of adjudicatory proceedings.

Table I to Subpart D—Adversary Adjudications Conducted by the Commission under 5 U.S.C. 554

Securities Exchange Act of 1934

Section 11A(b)(6), 15 U.S.C. 78k–1(b)(6) (suspension or revocation of registration, or censure of a securities information processor).

Section 11A(c)(3)(A), 15 U.S.C. 78k–1(c)(3)(A) (prohibition of transactions by brokers and dealers in registered securities other than on a national securities exchange).

Section 12(j), 15 U.S.C. 78*l*(j) (suspensions of effective date or revocation of registration of a security).

Section 15(b)(4), 15 U.S.C. 78*o*(b)(4) (suspension or revocation of registration, or censure of a broker or dealer).

Section 15(b)(6)(A), 15 U.S.C. 78*o*(b)(6)(A) (censure, suspension or bar an associate of a broker or a dealer).

Section 15B(c)(2), 15 U.S.C. 78*o*–4(c)(2) (suspension or revocation of registration, or censure of a municipal securities dealer).

Section 15B(c)(4), 15 U.S.C. 78*o*–4(c)(4) (censure, suspension or bar of an associate of a municipal securities broker or dealer).

Section 15B(c)(8), 15 U.S.C. 78*o*–4(c)(8) (removal or censure of member of the Municipal Securities Rulemaking Board).

Section 15C(c)(1)(A), 15 U.S.C. 78*o*–5(c)(1)(A) (suspension or revocation of registration, or censure of a government securities broker or dealer).

Section 15C(c)(1)(C), 15 U.S.C. 78*o*–5(c)(1)(C) (censure, suspension or bar of an associate of a government securities broker or dealer).

Section 17A(c)(3), 15 U.S.C. 78q–1(c)(3) (deny registration, censure, place limitation on, suspend, or revoke registration of a transfer agent).

Section 17A(c)(4)(C), 15 U.S.C. 78q–1(c)(4)(C) (censure, place limitations on, suspend or bar certain persons associated or seeking to associate with a transfer agent).

Section 19(h)(1), 15 U.S.C. 78s(h)(1) (suspension or revocation of registration, or censure of a self-regulatory organization).

Section 19(h)(2), 15 U.S.C. 78s(h)(2) (suspension or expulsion of a member of a self-regulatory organization).

Section 19(h)(3), 15 U.S.C. 78s(h)(3) (suspension or bar of a person from being associated with a national securities exchange or registered securities association).

Section 19(h)(4), 15 U.S.C. 78s(h)(4) (removal or censure of a director or officer of a self-regulatory organization).

Section 21B(a), 15 U.S.C. 78u–2(a) (imposition of civil penalties against any person for violation of the federal securities laws).

Ivestment Company Act of 1940

Section 9(d)(1), 15 U.S.C. 80a–9(d)(1) (imposition of civil penalties against any person for violation of the federal securities laws).

Investment Advisers Act of 1940

Section 203(e), 15 U.S.C. 80b–3(e) (suspension or revocation of registration, or censure of an investment adviser).

Section 203(f), 15 U.S.C. 80b–3(f) (censure, suspension, or bar of an associate of an investment adviser).

Section 203(i)(1), 15 U.S.C. 80b–3(i)(1) (imposition of civil penalties against any person for violation of the federal securities laws).

TABLE II TO SUBPART D—CROSS-REFERENCE TABLE SHOWING LOCATION OF RULES OF PRACTICE ADOPTED IN 1995 WITH FORMER RULES OF PRACTICE, RELATED RULES, AND STATUTORY PROVISIONS

New rules (17 CFR 201)	Former rules/Act §
100	1.
101	none.
102	2.
102(d)(4)	none.
103(a)–(c)	none.
104	5.
110	11(b).
111	11(d)–(e), 16(g).
112	11(c).
120	5 U.S.C. 554(d).
121	5 U.S.C. 554(d).
140(a)	22(h).
140(b)–(c)	22(k).
141(a)	6(a), (b), (f).
141(b)	23(d).
150(a)	23(a).
150(b)	2(d), (h).
150(c)	23(b).
150(d)	23(c).
151	12(b), 22(a).
152(a)–(e)	22(a)–(h).
152(f)	20(d).
153	7(f).
154	11(e).
155	12(d).
160	22(j), 23(b).

TABLE II TO SUBPART D—CROSS-REFERENCE TABLE SHOWING LOCATION OF RULES OF PRACTICE ADOPTED IN 1995 WITH FORMER RULES OF PRACTICE, RELATED RULES, AND STATUTORY PROVISIONS—Continued

New rules (17 CFR 201)	Former rules/Act §
161	13.
180(a)	2(f).
180(b)–(c)	none.
190	25.
191	27, 28.
192	4.
193	29.
200(a)(1)	6(a), (b).
200(a)(2)	6(f).
200(b), (c)	6(a), (b).
200(d)	6(d).
200(e)	6(c).
201	10.
202	8(b), (c).
210	9.
220	7(a)–(e).
221(a)–(c), (e)	8(d)
221(d)	none.
221(f)	6(e).
222(a)	8(d).
222(b)	none.
230	none.
231(a)	11–1.
231(b)	none.
232(a)–(d)	14(b).
232(e)–(f)	14(b)(2), (c).
233	15(a)–(e).
234	15(g).
235	15(f).
240	8(a).
250	11(e).
300	11(a)–(b).
301	11(b).
302(a)	11(f).
302(b)	25(d).
302(c)	20(c).
310	6(e).
320	14(a).
321(a)	11(e).
321(b)	none.
322	none.
323	14(d).
324	none.
325	14(a).
326	14(a).
340	16(d)–(e).
350	20(a)–(b).
351	20(a)(4).
360(a)	16(b).
360(b)	16(a).
360(c)	16(f).
360(d), (e)	17(f).
400	12(a).
401	12(c).
401(d)(2)	15 U.S.C. 78s(d)(2).
410(a)	17(a).
410(b)	17(b).
410(c)	none.
410(d)	none.
410(e)	17(h).
411(a)	17(g)(2).
411(b)	17(d).
411(c)	17(c).
411(d)	17(g)(1).

TABLE II TO SUBPART D—CROSS-REFERENCE TABLE SHOWING LOCATION OF RULES OF PRACTICE ADOPTED IN 1995 WITH FORMER RULES OF PRACTICE, RELATED RULES, AND STATUTORY PROVISIONS—Continued

New rules (17 CFR 201)	Former rules/Act §
411(e)	17(d).
411(f)	17(g)(3).
420(a), (b), (d)	17 CFR 240.19d–3(b).
420(c)	15 U.S.C. 78s(d)(2).
420(d)	58.
421(a)	15 U.S.C. 78s(e)–(f).
421(b)–(c)	none.
430	26(a), (c).
431(a)	none.
431(b)	26(b).
431(c)	26(d).
431(d)–(f)	26(e).
450(a)	17(e).
450(b)	18, 17 CFR 240.19d–3(c)–(g).
450(c)	22(d).
451	21.
452	21(d).
460	20, 21(c).
470	21(e).
490	23(e).
500	none.
510	none.
511	none.
512	none.
513	none.
514	none.
520	none.
521	none.
522	none.
524	none.
530	19.
531	none.
540	none.
550	17 CFR 202.8.
600	none.
601	none.
610	none.
611	none.
612	none.
613	none.
614	none.
620	none.
630	none.
900	none.

TABLE III TO SUBPART D—CROSS-REFERENCE TABLE SHOWING LOCATION OF FORMER RULES OF PRACTICE AND RELATED RULES WITH RULES OF PRACTICE ADOPTED IN 1995

Former rules	New rules (17 CFR 201)
1	100.
2	102.
2(d), (h)	150(b).
2(f)	180(a).
3 [reserved]	n/a.

TABLE III TO SUBPART D—CROSS-REFERENCE TABLE SHOWING LOCATION OF FORMER RULES OF PRACTICE AND RELATED RULES WITH RULES OF PRACTICE ADOPTED IN 1995—Continued

Former rules	New rules (17 CFR 201)
4	192.
5	104.
6(a)	200(b).
6(a),(b),(f)	141(a).
6(a), (b)	200(a)(1).
6(b)	200(c).
6(c), (d)	200(d), (e).
6(e)	221(f), 310.
6(f)	200(a)(2).
7(a)–(e)	220.
7(f)	153.
8(a)	240.
8(b)–(c)	202.
8(d)	221, 222(a).
9	210.
10	201.
11(a)–(b)	300.
11(b)	110, 301.
11(c)	112.
11(d), (e)	111.
11(e)	154, 250, 321(a).
11(f)	302(a).
11–1	231(a).
12(a)	400.
12(b)	151(c).
12(c)	401.
12(d)	155.
13	161.
14(a)	320, 325, 326.
14(b)	232(a)–(d).
14(b)(2), (c)	232(e)–(f).
14(d)	323.
15(a)–(e)	233.
15(f)	235.
15(g)	234.
16(a)	360(b).
16(b)	360(a).
16(c) [reserved]	n/a.
16(d)–(e)	340.
16(f)	351, 360(c).
16(g)	111.
17(a)	410(a).
17(b)	410(b).
17(c)	411(c).
17(d)	411(b), (e).
17(e)	450(a), (d).
17(f)	360(d), (e).
17(g)	411(d), (a), (f).
17(h)	410(e).
18	450(b).
19	530.
20(a)–(b)	350, 351, 460.
20(c)	302(c).
20(d)	152(f).
21	451.
21(c)	460.
21(d)	452.
21(e)	470.
22(a)	151(a)–(c), 152.
22(b) [reserved]	n/a.
22(c)	152(d).
22(d)	152(e), 450(c).
22(e)–(g)	152(a)–(c).
22(h)	140(a).
22(i)	none.

TABLE III TO SUBPART D—CROSS-REFERENCE TABLE SHOWING LOCATION OF FORMER RULES OF PRACTICE AND RELATED RULES WITH RULES OF PRACTICE ADOPTED IN 1995—Continued

Former rules	New rules (17 CFR 201)
22(j), (k)	160, 140(c).
22(k)	140(b).
23(a)	150(a).
23(b)	150(c), 160.
23(c)	150(d).
23(d)	141(b).
23(e)	490.
24	17 CFR 228.10(f), 17 CFR 229.10(d).
25	190.
25(d)	302(b).
26(a), (c)	430.
26(b)	431(b).
26(d)	431(c).
26(e)	431(d)–(f).
27	191.
28	191.
29	193.
17 CFR 202.8	550.
17 CFR 240.19d–2	401(a)–(b), (d).
17 CFR 240.19d–3(a)	420,421.
17 CFR 240.19d–3(b)	420(a), (b), (d).
17 CFR 240.19d–3(c)–(d).	450, 180(c).
17 CFR 240.19d–3(e)	452.
17 CFR 240.19d–3(f)	451.
17 CFR 240.19d–3(g)	100.

PART 202—INFORMAL AND OTHER PROCEDURES

40. The authority citation for Part 202 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 77t, 78d–1, 78u, 78w, 78*ll*(d), 79r, 79t, 77sss, 77uuu, 80a–37, 80a–41, 80b–9, and 80b–11, unless otherwise noted.

* * * * *

§ 202.8 [Removed and reserved]

41. Section 202.8 is removed and reserved:

PART 203—RULES RELATING TO INVESTIGATIONS

42. The authority citation for Part 203 continues to read as follows:

Authority: 15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

§ 203.3 [Amended]

43. In § 203.3, remove the words ''§ 201.2(e) of this chapter (Rule 2(e)'', and, in their place, add the words ''§ 201.102(e) of this chapter (Rule 102(e)''.

§ 203.7 [Amended]

44. In § 203.7(b), remove the words ''§ 201.2(b) of this chapter (Rule 2(b)'', and, in their place, add the words ''§ 201.101(a) of this chapter (Rule 101(a)''.

§ 203.8 [Amended]

45. In § 203.8, remove the words ''§ 201.14(b) of this chapter (Rule 14(b) of the Commission's rules of practice)'', and, in their place, add the words ''Rule 232(c) of the Commission's Rules of Practice, § 201.232(c) of this chapter''.

46. Part 209 is added to read as follows:

PART 209—FORMS PRESCRIBED UNDER THE COMMISSION'S RULES OF PRACTICE

Sec.
209.0–1 Availability of forms.
209.1 Form D–A: Disclosure of assets and financial information.

Authority: 15 U.S.C. 77h–1, 77u, 78u–2, 78u–3, 78v, 78w, 80a–9, 80a–37, 80a–38, 80a39, 80a–40, 80a–41, 80a–44, 80b–3, 80b–9, 80b–11, and 80b–12, unless otherwise noted.

§ 209.0–1 Availability of forms.

(a) This part identifies and describes the forms for use under the Securities and Exchange Commission's Rules of Practice, part 201 of this chapter.

(b) Any person may obtain a copy of any form prescribed for use in this part by written request to the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Any person may inspect the forms at this address and at the Commission's regional and district offices. (See § 200.11 of this chapter for the addresses of the SEC regional and district offices.)

§ 209.1 Form D–A: Disclosure of assets and financial information.

(a) Rules 410 and 630 of the Rules of Practice (17 CFR 201.410 and 201.630) provide that under certain circumstances a respondent who asserts or intends to assert an inability to pay disgorgement, interest or penalties may be required to disclose certain financial information. Unless otherwise ordered, this form may be used by individuals required to supply such information.

(b) The respondent filing Form D–A is required promptly to notify the Commission of any material change in the answer to any question on this form.

(c) Form D–A may not be withheld from the interested division. A respondent making financial information disclosures on this form after the institution of proceedings may make a motion, pursuant to Rule 322 of the Commission's Rules of Practice (17 CFR 201.322), for the issuance of a protective order to limit disclosure to the public or parties other than the interested division of the information submitted on Form D–A. A request for a protective order allows the requester an opportunity to justify the need for

confidentiality. The making of a motion for a protective order, however, does not guarantee that disclosure will be limited.

(d) No party receiving information for which a motion for a protective order has been made may transfer or convey the information to any other person prior to a ruling on the motion without the prior permission of the Commission or a hearing officer.

(e) A person making financial information disclosures on Form D–A prior to the institution of proceedings, in connection with an offer of settlement or otherwise, may request confidential treatment of the information pursuant to the Freedom of Information Act. *See* the Commission's Freedom of Information Act (''FOIA'') regulations, 17 CFR 200.83. A request for confidential treatment allows the requester an opportunity to substantiate the need for confidentiality. No determination as to the validity of any request for confidential treatment will be made until a request for disclosure of the information under FOIA is received.

Editorial Note: The text of Form D–A appears in the appendix to this document and will not appear in the Code of Federal Regulations.

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

47. The authority citation for Part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78*o*, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

48. By amending § 228.10 by adding paragraph (f) to read as follows:

§ 228.10 (Item 10) General.

* * * * *

(f) *Incorporation by Reference.* Where rules, regulations, or instructions to forms of the Commission permit incorporation by reference, a document may be so incorporated by reference to the specific document and to the prior filing or submission in which such document was physically filed or submitted. Except where a registrant or issuer is expressly required to incorporate a document or documents by reference, reference may not be made to any document which incorporates another document by reference if the pertinent portion of the document containing the information or financial statements to be incorporated by reference includes an incorporation by reference to another document. No document on file with the Commission for more than five years may be incorporated by reference except:

(1) Documents contained in registration statements, which may be incorporated by reference as long as the registrant has a reporting requirement with the Commission; or

(2) Documents that the registrant specifically identifies by physical location by SEC file number reference, provided such materials have not been disposed of by the Commission pursuant to its Records Control Schedule (17 CFR 200.80f).

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

49. The authority citation for Part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78*o*, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

50. By amending § 229.10 by adding paragraph (d) to read as follows:

§ 229.10 General.

* * * * *

(d) *Incorporation by Reference.* Where rules, regulations, or instructions to forms of the Commission permit incorporation by reference, a document may be so incorporated by reference to the specific document and to the prior filing or submission in which such document was physically filed or submitted. Except where a registrant or issuer is expressly required to incorporate a document or documents by reference, reference may not be made to any document which incorporates another document by reference if the pertinent portion of the document containing the information or financial statements to be incorporated by reference includes an incorporation by reference to another document. No document on file with the Commission for more than five years may be incorporated by reference except:

(1) Documents contained in registration statements, which may be incorporated by reference as long as the registrant has a reporting requirement with the Commission; or

(2) Documents that the registrant specifically identifies by physical location by SEC file number reference, provided such materials have not been disposed of by the Commission pursuant to its Records Control Schedule (17 CFR 200.80f).

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

51. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78*o*, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

§ 230.406 [Amended]

52. In § 230.406 paragraphs (e), (g), (h)(1) and (h)(2), remove the words ''§ 201.26'', and, in their place, add the words ''§ 201.431''.

§ 230.411 [Amended]

53. In §§ 230.411(b)(4), remove the words ''Rule 24 of the Commission's Rules of Practice (§ 201.24 of this chapter)'' and in paragraph (c) remove the words ''Rule 24 of the Commission's Rules of Practice'' and add, in their place, the words ''§ 228.10(f) and § 229.10(d) of this chapter''.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

54. The authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78*o*(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

§ 232.101 [Amended]

55. In § 232.101(c)(13), remove the words ''Rules of Practice (§§ 201.1–201.29 of this chapter)'', and add, in their place, the words ''Subpart D of Part 201 of this chapter''.

§ 232.102 [Amended]

56. In § 232.102(a), remove the words ''Rule 24 of the Commission's Rules of Practice (§ 201.24 of this chapter)'', and add, in their place, the words ''§ 228.10(f) and § 229.10(d) of this chapter''.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

57. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78*o*, 78p, 78q, 78s, 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.

* * * * *

§ 240.12b–23 [Amended]

58. In § 240.12b–23(b), remove the words ''Rule 24 of the Commission's Rules of Practice (§ 201.24 of this chapter)'' and add, in their place, the words ''§ 228.10(f) and § 229.10(d) of this chapter''.

§ 240.12b–32 [Amended]

59. In § 240.12b–32(a), remove the words ''§ 201.24 of this chapter'' and add, in their place, ''§ 228.10(f) and § 229.10(d) of this chapter''.

§ 240.14a–101 [Amended]

60. In § 240.14a–101 NOTE D 1, remove the words ''Rule 24 of the Commission's Rules of Practice (§ 201.24 of this chapter)'' and add, in their place, the words ''§ 228.10(f) and § 229.10(d) of this chapter''.

61. Sections 240.19d–2 and 19d–3 are revised to read as follows:

§ 240.19d–2 Applications for stays of disciplinary sanctions or summary suspensions by a self-regulatory organization.

If any self-regulatory organization imposes any final disciplinary sanction as to which a notice is required to be filed with the Commission pursuant to Section 19(d)(1) of the Exchange Act, 15 U.S.C. 78s(d)(1), pursuant to Section 6(b)(6), 15A(b)(7) or 17A(b)(3)(G) of the Act (15 U.S.C. 78f(b)(6), 78*o*–3(b)(7) or 78q–1(b)(3)(G)), or summarily suspends or limits or prohibits access pursuant to Section 6(d)(3), 15A(h)(3) or 17A(b)(5)(C) of the Act (15 U.S.C. 78f(d)(3), 78*o*–3(h)(3) or 78q–1(b)(5)(C)), any person aggrieved thereby for which the Commission is the appropriate regulatory agency may file with the Commission a written motion for a stay of imposition of such action pursuant to Rule 401 of the Commission's Rules of Practice, § 201.401 of this chapter.

§ 240.19d–3 Applications for review of final disciplinary sanctions, denials of membership, participation or association, or prohibitions or limitations of access to services imposed by self-regulatory organizations.

Applications to the Commission for review of any final disciplinary sanction, denial or conditioning of membership, participation, bar from association, or prohibition or limitation with respect to access to services offered by a self-regulatory organization or a member thereof by any such organization shall be made pursuant to Rule 420 of the Commission's Rules of Practice, § 201.420 of this chapter.

§ 240.24b–2 [Amended]

62. In § 240.24b–2 paragraphs (d)(2), (e)(1), and (e)(2), remove the words ''17 CFR 201.26'', and, in their place, add the words ''§ 201.431 of this chapter''.

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

63. The authority citation for part 250 continues to read as follows:

Authority: 15 U.S.C. 79c, 79f(b), 79i(c)(3), 79t, unless otherwise noted.

§ 250.22 [Amended]

64. In § 250.22(b)(1), remove the words ''§ 201.24 of this chapter'' and add, in their place, ''§ 228.10(f) and § 229.10(d) of this chapter''.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

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

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78*ll*(d); 80b–3, 80b–4, and 80b–11.

§ 260.7a–29 [Amended]

66. In § 260.7a–29(a), remove the words ''§ 201.24 of this chapter'' and add, in their place, ''§ 228.10(f) and § 229.10(d) of this chapter''.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

67. The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted.

* * * * *

§ 270.0–4 [Amended]

68. In § 270.0–4(a), remove the words ''§ 201.24 of this chapter'' and add, in their place, ''§ 228.10(f) and § 229.10(d) of this chapter''.

§ 270.8b–32 [Amended]

69. In § 270.8b–32(a), remove the words ''§ 201.24 of this chapter'' and add, in their place, ''§ 228.10(f) and § 229.10(d) of this chapter''.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

70. The authority citation for part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–3, 80b–4, 80b–6A, 80b–11, unless otherwise noted.

* * * * *

§ 275.0–6 [Amended]

71. In § 275.0–6 paragraph (a) and the NOTE at the end of the section, remove the words ''§ 201.24 of this chapter'' and add, in their place, ''§ 228.10(f) and § 229.10(d) of this chapter''.

By the Commission.

Dated: June 9, 1995.

Margaret H. McFarland,

Deputy Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix—Form D–A

BILLING CODE 8010–01–P

Form D-A

Model Disclosure of Assets and Financial Information Form

Instructions: The Commission's Rules of Practice provide that under certain circumstances a respondent who asserts or intends to assert an inability to pay disgorgement, interest or penalties may be required to disclose certain financial information. See Rules 410 and 630. Unless otherwise ordered, this form may be used by individuals required to supply such information. Partnerships, corporations or other entities should submit a financial statement, including an income statement, balance sheet and federal tax returns for each year from the year of the earliest violation alleged against the entity in the order instituting proceedings to the present.

The respondent filing this form is required promptly to notify the Commission of any material change in the answer to any question on this form.

A respondent making financial information disclosures on this form or in another manner pursuant to the requirements of Rule 410 or Rule 630 may submit the form with a motion for a protective order pursuant to Rule 322 of the Commission's Rules of Practice. Any other person submitting this form may request that the Commission afford the information submitted confidential treatment under the Freedom of Information Act under the Commission's Freedom of Information Act ("FOIA") regulations, see 17 CFR 200.83. A request for confidential treatment allows the requester an opportunity to justify the need for confidentiality. A request for confidential treatment does not, however, guarantee confidentiality.

Notwithstanding any request for a protective order or for confidential treatment, copies of the financial disclosure statement shall be served on the interested division and will be included in the record of the proceeding. See Rule 630(d). If confidential treatment is sought, notice that a financial disclosure statement and request for confidential treatment have been filed shall be served on all other parties.

No party receiving information for which confidential treatment has been requested may transfer or convey the information to any person or entity not a party to the proceeding without the prior permission of the Commission or a hearing officer.

United States of America
Before the
Securities and Exchange Commission

In the Matter of _____	))))))	Administrative Proceeding File No. 3-_____

Part I: Summary Financial Disclosure Statement

Full Name: _____
Last First Middle

A. Net Worth

1. Assets: (from Part II.B.) _____
2. Liabilities: (from Part II.C.) _____
3. Net Worth: (from Part II.D.) _____

B. Income and Payments Received

1. Gross income reported on most recent federal tax filing: _____
2. Last 12 calendar months (from Part II.E.): _____*

* If this amount, divided by 12, does not equal your current monthly income, please explain the discrepancy on an attached sheet.

C. Expenses

1. Last 12 calendar months (from Part II.F.): _____*

* If this amount, divided by 12, does not equal your current monthly expenses, please explain the discrepancy on an attached sheet.

United States of America
Before the
Securities and Exchange Commission

In the Matter of _____	)))))	Administrative Proceeding File No. 3-_____

Part II: Detailed Financial Disclosure Information

Full Name: _____
Last First Middle

If this form is filled out by a respondent requesting a protective order pursuant to Rule of Practice 322 (17 CFR 201.322), please check the box below.

☐ PROTECTIVE ORDER REQUESTED. Disclosure of this document is prohibited unless specifically authorized below. This document should be placed in a nonpublic file.

For Use Only by the Secretary of the Commission:

☐ By order of _____ (date), the Commission authorized this form to be placed in a public file.

_____
(Signature of Secretary)

Last Name: _____

A. Scope of Information Requested:

Requests for information about you include a request for the same information about your spouse (unless you are legally separated and living apart), minor children and any other dependents.

B. Assets:

List all assets owned by you, directly or indirectly, and all assets that are subject to your enjoyment or control, regardless of whether legal title or ownership is held in your name.

1. Cash _____
2. Listed Securities _____
3. Surrender Value of Insurance _____
4. Loans, Notes, Accounts Receivable Due to You _____
5. Real Estate _____
6. Furniture _____
7. Jewelry, Art, Rugs, Silver Collectibles, Other Valuables _____
8. Automobiles _____
9. Unlisted Securities _____
10. Partnership Interests (non-securities) _____
11. Net Value of Ownership Interest in Business _____
12. IRA, Keogh, 401(k), Annuity or Pension Accounts _____
13. Other (Itemize):

    _____ _____

    _____ _____

14. **Total Assets** _____

C. Liabilities:

List all your liabilities including, but not limited to, the items listed below.

1. Mortgages _____
2. Auto Loans _____
3. Credit Card Debt _____
4. Margin Loans _____
5. Insurance Policy Loans _____
6. Installment Loans _____
7. Other Loans, Notes or Accounts Payable _____
8. Accrued Real Estate Taxes _____
9. Judgments/Settlements Owed _____
10. Other (Itemize):

    _____ _____

    _____ _____

11. **Total Liabilities** _____

Last Name: _____

D. Net Worth
(Assets Less Liabilities) _____

E. Income/Payments Received

List all income or other payments received from any source in the last 12 months by you, or by any other person or entity if you have any right, power or authority to control or enjoy the use of the money or property received by such other person or entity. Identify the source, the recipient and the amount of payment, including but not limited to the items listed below.

Description/Purpose	Source	Amount
1. Salary/Wages		
2. Commissions/Advances		
3. Bonuses		
4. Dividends		
5. Interest		
6. Distributions of Capital		
7. Annuity, Pension Payments		
8. Rents/Royalties (net)		
9. Sales of Assets (net)		
10. Repayment of Loans		
11. Alimony/Child Support		
12. Gifts over $1,000		
13. Payments by Others on Your Behalf (see section I below)		
14. Other (itemize):		

15. **Total Income/Receipts** _____

16. If you anticipate unusual income in the coming 12 months, please explain.

Last Name: _____

F. Expenses/Disbursements

List all your expenditures for the past 12 months, including but not limited to the items listed below. Identify the purpose and the amount of each expenditure.

Description	Amount
1. Mortgage/Rent	_____
2. Food	_____
3. Utilities	_____
4. Payments on Loans	_____
5. Real Estate Taxes	_____
6. Insurance Premiums	_____
7. Medical Expenses	_____
8. Automobile Expenses	_____
9. Alimony/Child Support	_____
10. Income Taxes (federal, state and local)	_____
11. Other Expenses (itemize):	
_____	_____
_____	_____
_____	_____
_____	_____
12. **Total Expenses/Disbursements**	_____

13. If you anticipate unusual expenses in the coming 12 months, please describe them.

G. Asset Schedules

1. For each asset or class of assets included in Section II.B(5-13) with a fair market value greater than $2,000, describe the asset(s), state the form of ownership (e.g., individual, joint, beneficial interest), provide a fair market value, and explain how fair market value was determined (e.g., appraisal, comparison, estimate, etc.).

2. List all securities or commodities brokerage accounts and accounts at banks or other financial institutions in your name, under your control, in which you have or had a beneficial interest, or to

Last Name: _____

which you are or were a signatory since the date of the first violation alleged against you. For each account, specify the location of the account, account number, balance and balance date. Please identify all accounts, regardless of their location.

3. List all 401(k) plans, pension plans, Keogh plans, individual retirement accounts, profit sharing plans, thrift plans, life insurance policies or annuities in which you have an interest, vested or otherwise. For each account, specify the account name, the location of the account, account number, balance and balance date. For each account state whether you are permitted to borrow against or make withdrawals from the account.

4. Identify the location and account number of all your safe deposit boxes. Include any boxes in which you have property or papers, whether or not you are the account holder.

5. Identify all patents, trademarks, service marks, royalty agreements, licenses, or other general intangibles in which you have an interest.

H. Liability Schedules

1. For each liability greater than $2,000 listed in Section II.C., indicate the creditor, the account number, if any; the date incurred; the original amount of the liability; the length of the obligation; the interest rate; the collateral or security, if any; the outstanding balance; and the name(s) and address(es) of any other obligee(s). State whether you are related to or have a personal or social relationship with the creditor, its management or owners.

2. List all credit cards and lines of credit in your name or to which you are a signatory, including the name of the credit issuer, account number, credit limit, and amount of indebtedness.

3. List all contingent liabilities. Include any notes on which you are a co-maker, guarantor or endorser and all pending lawsuits in which you are named as a defendant.

I. Schedules of Income, Receipts and Disbursements

1. Disbursements by Others on Your Behalf. List any payments or disbursements having a value of $1,000 or greater made by any other person or entity to a third party on your behalf since the date of the first violation alleged against you. Include the amount of the disbursement and the name and address of the person or entity who made the disbursement. If no such disbursements have been made, please so state.

2. Fringe Benefits. List any fringe benefits, such as the lease of an automobile, currently provided by your employer.

3. Asset Transfers by You. List any assets or property with a cost or fair market value of $2,000 or more that you transferred or otherwise disposed of since the date of the first violation alleged against you. State the value of the asset, the consideration received, and your relationship with the transferee. If no such transfers have been made, please so state.

4. Additional Deposits by You. Identify any financial institution accounts (other than those identified in section G.2. above) in which you have deposited more than $2,000 since the date of the first violation alleged against you. If no such deposits have been made, please so state.

Last Name: _____

5. Trusts and Inheritances Already Vested. Describe any vested interest in a trust or will pursuant to which you are receiving or will receive a devise, bequest, other inheritance or distribution.

6. Current and Prior Business Relations. List any sole proprietorships, joint ventures, corporations or other business enterprises in which you are now or have been a principal, holder of 10 percent or more of the issued stock, officer, director, manager or chief operating officer at any time since the date of the first violation alleged against you.

J. Personal Information

Current residence: _____
street unit

_____
city state zip code

Current phone number(s): home: ( ) -
business: ( ) -
car: ( ) -
other: ( ) -

Social security number: - -

List any other names (including a maiden name) you have used.

If currently married, please state your spouse's name, age and social security number, whether or not he or she resides with you, and the date of your marriage.

If you have previously been married, please state the name of your former spouse(s) and the date of your marriage(s). If the date of a marriage was after the date of the first violation alleged against you, include your former spouse's social security number and last known address.

Identify all dependents. For each, please state his or her age, social security number, and whether or not he or she resides with you.

Identify any other members of your household. For each, please state his or her age and relationship to you.

K. Attachments:

1. Attach any federal tax returns filed by you (including personal, trust, or business returns) for the year of the first violation alleged against you and all subsequent years.

2. Attach any federal gift tax returns filed by you for the year of the first violation alleged against you and all subsequent years.

3. Attach any financial statement that you prepared for any purpose (e.g., a financial statement provided to a bank to secure a loan) in the year of the first violation alleged against you and all subsequent years.

Last Name: _____

4. If you are a trustee, executor or administrator, attach a copy of the instrument appointing you as such.

5. List of Attachments Submitted With This Form:

Please list all financial statements, tax returns and other materials submitted with this form. Do not submit originals. Make sure all copies are legible. Illegible copies do not satisfy the requirements for filing your financial disclosure information.

L. Declarations and Signature

I, _____, hereby declare under penalty of perjury that I have examined the information given in this statement and attached hereto and, to the best of my knowledge and belief, it is true, correct, and complete. I further declare that I have no assets, owned either directly or indirectly, or income of any nature other than as shown in, or attached to, this statement. I understand that any material misstatements or omissions made by me herein, or in any attachments hereto, may constitute criminal violations, punishable under 18 U.S.C. 1001 or other statutes.

The Securities and Exchange Commission and any of its staff are authorized to obtain any such information from credit bureaus, financial institutions or any other source as may be needed to verify the statements made on this form.

The statements herein and attached hereto represent my financial condition as of _____ (date).

_____ (signature) _____ (date)

Sworn before me this ____ day of _____, 199__.

[Seal]

_____
Notary Public

My commission expires on _____(date)

[FR Doc. 95–14750 Filed 6–22–95; 8:45 am]
BILLING CODE 8010–01–C

federal register

Friday
June 23, 1995

Part III

Department of Transportation

Coast Guard

46 CFR Part 160

Recreational Inflatable Personal Flotation Device Standards; Interim Rule

33 CFR Part 175, et al;

46 CFR Part 2, et al.

Inflatable Personal Flotation Devices (PFDs) for Recreational Boaters; Approval; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 160

[CGD 94–110]

RIN 2115–AE96

Recreational Inflatable Personal Flotation Device Standards

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is establishing regulations for approval of inflatable personal flotation devices (PFDs) for recreational boaters. These regulations establish structural and performance standards for inflatable PFDs, as well as the procedures for Coast Guard approval of inflatable PFDs. These standards are intended to allow for approval of inflatable PFDs which should be more amenable to continuous wear by recreational boaters than currently approved PFDs, thereby increasing use of PFDs by the boating public and saving lives.

DATES: This rule is effective on July 24, 1995. The Director of the Federal Register approves as of July 24, 1995 the incorporation by reference of certain publications listed in the regulations. Comments must be received on or before October 23, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 94–110), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on collection-of-information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

A copy of the material listed in ''Incorporation by Reference'' of this preamble is available for inspection at room 1404, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel E. Wehr, U.S. Coast Guard, Survival Systems Branch (G–MVI–3), telephone (202) 267–1444, facsimile (202) 267–1069, or electronic mail ''mvi-3/G-M18@cgsmtp.comdt.uscg.mil''. A copy of this interim final rule may be obtained by calling the Coast Guard's toll-free Customer Infoline, 1–800–368–5647. In Washington, DC, call 267–0780.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 94–110) and the specific section of this rule to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Mr. Samuel E. Wehr, Project Manager, U.S. Coast Guard, Office of Marine Safety, Security, and Environmental Protection, Survival Systems Branch (G–MVI–3) and Ms. Helen Boutrous, Project Counsel, Office of Chief Counsel.

Regulatory History

On November 9, 1993, the Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) entitled ''Inflatable Personal Flotation Devices'' in the **Federal Register** (58 FR 59428). The Coast Guard received nine letters commenting on the ANPRM. One of the comments requested a public hearing, however, after consideration, the Coast Guard determined that no new issues would have been raised which would have materially assisted the Coast Guard in developing this rule. Therefore, no public hearing was held.

Regulatory Information

This rule is being published as an interim rule and is being made effective 30 days after the date of publication. The standards established by this IFR will give manufacturers the opportunity to make a significant number of Coast Guard-approved inflatable PFDs available to the boating public in 1996. Manufacturers require sufficient lead time to develop the PFDs in accordance with safety standards before they can actually offer products to boaters. It is the Coast Guard's position that boaters will be more likely to wear the less bulky inflatable PFDs than the more bulky designs currently available. Therefore, availability inflatable PFDs will save boaters lives.

Most of the standards adopted by this rulemaking are Underwriters Laboratories (UL) standards for inflatable PFDs and PFD components (UL 1180 and 1191) which were developed in accordance with the American National Standards Institute (ANSI) procedure for voluntary industry standards. In accordance with the ANSI procedures, interested parties were provided with an opportunity to participate in the development of the standards. The public was also given an opportunity to comment on the adoption of approval standards for inflatable PFDs in the ANPRM published on November 9, 1993 (58 FR 59428). All of the comments were generally in favor of the development of structural and performance standards for inflatable personal flotation devices (PFDs) and procedures for Coast Guard approval of inflatable PFDs. The ANPRM advised of the intention to use an industry consensus standard and encouraged interested, knowledgeable persons to participate in the ANSI standards making process. On February 24, 1994, notice was published in the Federal Register (59 FR 9015) of the Coast Guard's participation in the first consensus standards meeting with UL. This notice again invited interested technical experts knowledgeable in the field to participate in the meeting and process.

This IFR affords the opportunity for the public to comment on, and the Coast Guard to revise, the standards before they are finalized. Comments are invited on all aspects of this rule, and the Coast Guard specifically requests comments on particular issues throughout this preamble. Furthermore, carriage of inflatable PFDs will not be mandatory for boat owners, rather they are an

allowable alternative to existing Coast Guard-approved PFDs. Coast Guard approval of inflatable PFDs represents a business opportunity for manufacturers, distributors, and retailers. For these reasons, the Coast Guard for good cause finds, under 5 U.S.C. 553(b)(B), that notice, and public procedure on the notice, before the effective date of this rule are unnecessary.

Background and Purpose

The November 9, 1993, ANPRM discussed the Coast Guard's intention to adopt structural and performance standards for inflatable personal flotation devices (PFD) used on recreational boats, as well as the procedures for approval, and carriage requirements. The ANPRM discussed the Coast Guard's intention to participate in the development of an Underwriters Laboratories (UL) standard for inflatable PFDs, which would be the basis for Coast Guard approval of these devices. The UL standard (UL 1180) is complete. A Notice of Proposed Rulemaking (NPRM) which proposes complementary rules governing the carriage, use, registration, and recall of inflatable PFDs for recreational boats, is published elsewhere in today's edition of the **Federal Register**. More comprehensive procedures for approval of inflatable devices, and other PFDs as well, are included in the NPRM.

These regulations are intended to allow approval of PFDs which may be more appealing to recreational boaters than currently approved PFDs, thereby increasing use of PFDs by the boating public and saving lives. However, the Coast Guard notes that the currently approved inherently buoyant PFDs have an excellent lifesaving record. The Coast Guard boating statistics show that the fatality rate has dropped from about 20 to 4 (per 100,000 boats) over the past 25 years, and this decrease is in part due to use of these inherently buoyant PFDs. The Coast Guard also notes that inherently buoyant PFDs are more appropriate for non-swimmers than inflatable PFDs. Moreover, there are a number of boating applications where inflatable PFDs are not suitable, as listed in the PFD information pamphlet. Therefore, inherently buoyant PFDs will continue to play a vital role in boating safety programs for the public.

Advisory Committee and Other Consultations

In developing these regulations the Coast Guard consulted with the National Boating Safety Advisory Council (NBSAC) and the National Association of State Boating Law Administrators (NASBLA). In May 1994, NBSAC passed a resolution recommending approval for Type I, II, III, IV, and V inflatable PFDs. In 1988, 1993 and 1994, NASBLA also passed resolutions urging that such approvals be granted as soon as possible. Additionally, the National Transportation Safety Board has recommended that the Coast Guard approve inflatable PFDs.

NBSAC formed a subcommittee to study the implementation of the various types of approvals that might be granted by the Coast Guard and developed an ''inflatable PFD objectives statement'' and ''performance goals''. Copies of these documents are included in the docket file for this rulemaking. The documents identified a number of goals that NBSAC determined to be appropriate in the effort to set standards for the manufacture and approval of inflatable PFDs. In November 1994, the full council passed a resolution supporting the objectives statement and goals. The regulations adopted by this IFR are fully consistent with the final resolution adopted by NBSAC.

Inflatable PFD Studies

The Coast Guard has sponsored two studies on the suitability of inflatable PFDs in the recreational boating environment—a 1981 Inflatable PFD Field Test, Report No. CG–M–84–1 and a 1993 study conducted by the BOAT/U.S. Foundation for Boating Safety. Each study involved the use of about 500 inflatable PFDs in a recreational boating environment. Copies of these studies are included in the docket file for this rulemaking. Initial review of these studies indicated that inflatable PFDs could not be approved without extensive servicing requirements or conditions on approval. However, as discussed below, developments in inflatable PFDs have allowed the Coast Guard to establish the approval standards for inflatable PFDs adopted in this IFR.

1981 Inflatable PFD Field Test

The 1981 Inflatable PFD Field Test revealed that the PFDs used by the participants lacked an armed inflation mechanism nearly 20 percent of the time. Based on this information, the Coast Guard determined that it was not appropriate to approve inflatable PFDs without a mandatory structured servicing program. In 1981, no satisfactory servicing program was available, nor could one be developed at a reasonable cost for recreational boaters. Therefore, totally inflatable recreational PFD's were not approved.

BOAT/U.S. Study

The 1993 BOAT/U.S. Foundation for Boating Safety, Inflatable PFD Study showed approximately the same result as the 1981 study discussed above. Boat/U.S. distributed inflatable PFDs to recreational boaters and asked them to use the PFDs during their boating activities. BOAT/U.S. then recalled the PFDs in ''as is'' condition. After an initial visual examination, about 45 percent of the PFDs were judged to be improperly armed. Upon further evaluation, it was concluded that one-third of the improperly armed PFDs may have appeared to the average boater as having been armed correctly, a potentially serious condition (p.8 of study). In addition, 11 percent of the PFDs which technicians judged to be properly armed, actually had spent inflation cartridges, a potentially very serious situation.

Of the 458 inflatable PFDs tested by the BOAT/U.S. Foundation, technicians determined that:

(a) 383 (84%) could be made operational when they were returned.

(b) 40 (8.7%) were found to have operational deficiencies which could result in diminished performance of the PFD. Of these 40 inflatable PFDs, 17 required a greater than average force to actuate the inflation assembly. Some of the PFDs were found to have air retention losses of over 20 percent after 24 hours and others had slow inflation times. The slow inflation and air loss were caused by secondary closures which failed to open or possible leaks in the inflation assembly. In particular, one manufacturer used snap closures that did not always open when the device was inflated.

(c) 35 (7.6%) had various operational deficiencies which actually diminished their performance. Of these 35 inflatable PFDs, 19 were inoperable when returned for testing after use by the participants.

New Developments in Inflatable PFDs and UL Standards

New developments in the manufacture of inflatable PFDs, along with work done in the area by UL since the testing was conducted in the above studies, have greatly improved the chances that inflatable PFDs will work when used and maintained by the average boater. The problems revealed by the two studies discussed above have been addressed in the UL standard. It is the Coast Guard's position that PFDs meeting the requirements of the new UL standard, along with certain additional requirements included in this IFR, do not have the problems that prevented

Coast Guard from approving recreational inflatable PFDs in the past.

The Coast Guard is proceeding with approval at this time based on the development of much more ''user serviceable'' inflatable PFDs. With these user serviceable PFDs there is a good chance that the user of the PFD will (1) recognize when the PFD needs servicing; and (2) be able to perform the servicing correctly. These improved PFDs are equipped with inflation mechanisms (inflators) that are user-friendly. User-friendly features are often referred to as mechanisms that are designed with ''good human factors.'' Better human factors relates to the ease with which boaters can determine when their inflatable PFD needs rearming and the ease with which they can correctly rearm their PFD. Good human factors design will decrease the incidence of unarmed inflatable PFDs that were evident in the studies discussed above. This IFR requires inflatable PFDs to have inflators that a high proportion of the user population can quickly and correctly rearm with little or no reference to instructions or training.

In order to increase the likelihood that spent (or unarmed) inflators are readily distinguishable in actual use, the UL standards incorporated by this IFR require a status indicator that a high percentage of test subjects must correctly identify in the approval testing. Additionally, a high percentage of a pool of test subjects must be able to correctly rearm the device with no additional training, other than use of the owner's manual provided and toll-free calls to a manufacturer's help line, if one is available. The UL standard has two different levels for inflators, and the Coast Guard is allowing manufacturers to utilize different use restrictions and Type designations to alert boaters to the simplicity or complexity of the device that should be considered before purchase. The Coast Guard's goal is for PFDs to have inflators with such good human factors that boaters can tell if their PFD is armed as easily and quickly as they can tell the difference between a nickel and dime. This should then enable them to correctly rearm their inflatable PFDs almost every time.

As discussed below, other problems revealed in the study have also been addressed.

UL Standard 1180 includes a requirement for testing inflator assemblies after salt water spray tests to ensure that the inflators are capable of being easily actuated if left in a corrosive environment.

Many of the problems associated with partial deflation over 24 hours were attributed to sand or grit in the oral inflation tube, which allowed the valve in the tube to remain partially open and leak. The UL standard permits, but does not require, a dust cap on oral inflation tubes. Dust caps should prevent the entrance of some sand and grit into the inflator tube, and thus reduce the incidences of this minor problem. Other reasons for leaks included improper installation of the inflation assembly and holes in the bladder assembly itself. These problems will need to be dealt with by the boaters themselves as instructed by the owner's manual.

UL standards 1180 and 1191 also include a number of tests to ensure the durability of the bladder. The label will include a warning to perform a service test at least once each year.

Industry Standards Development

Underwriters Laboratories Inc. developed and revised UL standards 1180 and 1191, respectively, which are incorporated by reference in this rule, over the past year. The Coast Guard participated in this standards development process, which included two UL meetings and two UL comment periods. At the first meeting, which was announced in the **Federal Register** (February 24, 1994; 59 FR 9015), participants discussed concepts for the various kinds of PFDs that should be included in the standards, their minimum performance, and the performance of critical components such as the inflation mechanisms. UL then formulated complete draft proposals for the inflatable PFDs and their components and requested comments. An ad hoc advisory committee meeting was then held to discuss the comments received in detail. The Coast Guard outlined the most important characteristics of inflatable PFDs that it would examine when considering the devices for USCG approval. UL's minutes of this meeting are included in the docket for this rulemaking. Subsequent to the ad hoc advisory committee meeting, UL proposed revised standards for inflatable PFDs and their components and invited comments. The Coast Guard commented on this revised proposal, and UL, after considering the industry and Coast Guard comments, adopted the standards incorporated by reference in this interim final rule.

Discussion of Comments

The comments received in response to the ANPRM published November 9, 1993, that pertain to the approval procedures and other issues regarding inflatable PFD use are discussed in the NPRM (CGD 93–055) published elsewhere in today's edition of the **Federal Register**. The comments that pertain to the standards for inflatable PFDs and this IFR are discussed below.

The Coast Guard received eight letters commenting on the ANPRM before the close of the comment period. One supplemental letter that was received after the close of the comment period was also considered. The comments were received from a boat manufacturer, a cruise ship line, five PFD manufacturers and a boat owners association. All of the comments were generally in favor of the development of structural and performance standards for inflatable personal flotation devices (PFDs) and procedures for Coast Guard approval of inflatable PFDs.

Each of the comment letters received addressed a variety of issues regarding the approval of inflatable PFDs. Most of these issues were raised in a series of questions posed in the ANPRM. The issues addressed by these comments are discussed below.

General Comments

Most of the comments stated that because inflatable PFDs are lightweight and compact, and therefore cooler, they are more likely to be worn than most of the bulky inherently buoyant PFDs currently in use. These comments also stated, however, that increasing consumer interest is dependent upon lowering the relatively high cost of the inflatable models currently marketed. They acknowledged that Coast Guard approval of, and recommendations concerning, inflatable PFDs will also increase sales and help development of lower cost inflatable PFDs by increasing competition.

The Coast Guard agrees with these comments, but notes that increased wearing of PFDs also requires changing boaters' attitudes about the need for and value of PFD use. The Coast Guard emphasizes that, as with all PFDs, for inflatable PFDs to save lives, they must be worn. But also, inflatable PFDs must be cared for to a greater extent than other PFDs. The Coast Guard encourages boaters, manufacturers, State boating officials and boating safety organizations to promote the proper care of inflatable PFDs and increased wearing of PFDs in general. One of the significant advantages of inflatable PFDs, and the reason the Coast Guard has determined that inflatable PFD standards should be established as soon as possible, is that inflatable PFDs are comfortable enough to wear at all times while on the water. While two studies have indicated that improved comfort alone may not significantly increase the wear rate for PFDs, the Coast Guard's position is that the combination of

increased comfort and boater awareness of the crucial importance of wearing a PFD will increase the numbers of boaters wearing PFDs and save lives. That is why the Coast Guard is requiring that educational pamphlets and manuals, highlighting the importance of wearing a PFD which is appropriate for the user and the activity, be supplied with all Coast Guard-approved PFDs. Through this IFR and several PFD awareness initiatives such as the annual National Safe Boating Week Campaign, the Coast Guard is seeking to increase boater awareness of the importance of wearing PFD.

One PFD manufacturer stated that unfortunately the public perceives non-Coast Guard-approved safety equipment as inferior equipment. The comment pointed out the fact that the Coast Guard has not tried to prohibit, and has even strongly recommended that crew members working on deck on commercial vessels wear some type of PFD, including inflatable lifejackets which are not approved. To remedy this problem, the comment asked the Coast Guard to consider changing the PFD regulatory language from U.S. Coast Guard ''Approved'' to U.S. Coast Guard ''Required.''

The Coast Guard agrees that generally, unapproved equipment is better than no equipment. However, unapproved equipment does not satisfy inspection or equipment requirements. The Coast Guard acknowledges the public's misperception regarding products that are not ''Coast Guard-approved''. However, the Coast Guard is not adopting the recommendation to change ''Approved'' to ''Required.'' Such a change in terminology would be misleading because it would imply that many items of equipment which are available options for meeting the carriage requirements would be ''required'' on vessels. Moreover the change is not likely to correct the misperception.

The comment also recommended that inflatable PFDs be considered as substitutes for inherently buoyant PFDs only in situations in which the vessel has space limitations which do not allow for the carriage of traditional Coast Guard-approved PFDs. The comment stated that all vessel operators should be allowed to petition the Coast Guard for an exemption from PFD carriage requirements which would allow the vessel to substitute inflatable lifejackets for traditional Coast Guard-approved PFDs. The comment further suggested that granting such an exemption be conditioned on the vessel operator's completion of an educational course in the use and maintenance of inflatable lifejackets.

The Coast Guard is not adopting these recommendations because the administrative burdens associated with granting individual exemptions and determining ''space limitations'' for all boat types would be unmanageable. Inflatable PFDs will be allowed to be carried in place of inherently buoyant devices based on their approval type (I, II, III, or V), with only Type Vs having some condition on their carriage. PFD types are discussed later in this preamble under ''PFD *Approval Type vs. performance type*''. Also, approval is limited to persons at least 16 years of age and weighing more than 80 pounds. This limitation to adults is deemed necessary to restrict the use of these devices to those who are capable of using them in an emergency situation. As discussed above, the need for education will be addressed by pamphlets and manuals provided with the PFDs.

Another PFD manufacturer cautioned against drafting fully inflatable PFD standards that would result in only unaffordable, ''high-tech'' Coast Guard-approved inflatable PFDs.

The Coast Guard agrees and is adopting standards for a range of devices with the minimum safety requirements necessary to meet the various needs of most recreational boaters.

The boat manufacturer stated that inflatable PFDs are far easier to adjust than the approved PFDs now available, noting that this feature, among others, contributes to the convenience of inflatable PFDs and would increase their potential for use.

The Coast Guard agrees with this comment. This IFR adopts standards intended to ensure that inflatable PFDs continue to have body straps and closures which are easy to adjust.

The comment received from the cruise ship line noted that it operates two coastal cruise ships which carry 106 and 138 passengers respectively. According to the cruise line, ''expedition'' type cruises involve ferrying passengers in tenders to visit remote areas. All passengers are required to don PFDs before boarding the tenders. The comment stated that the ability to use less bulky inflatable PFDs would greatly enhance the process and improve passenger comfort.

It must be noted that vessels operating as cruise ships are covered by PFD carriage requirements for commercial passenger carrying vessels, which are not the subject of this rulemaking project. The inflatable PFDs for such types of service may be approved under existing regulations in 46 CFR 160.176.

Specific Comments on Issues Raised in the ANPRM Self Inspection by Means of Indicating Devices

The ANPRM stated that because recreational boaters do not always maintain inflatable PFDs in an overall serviceable condition, the inflation system should include an ''indicating device'' which would allow the boater to be reasonably sure that the PFD is ready to function and perform when used, or to identify whether the inflatable PFD requires servicing or rearming.

One PFD manufacturer asserted that although a self-inspecting inflation system will indicate if the unit needs to be rearmed, the boater still has to be relied upon to look at the indicator each time the PFD is donned. Further, no self-inspection system will prevent a boater from donning a disarmed PFD.

The Coast Guard acknowledges that self-inspection systems do not guarantee that boaters will not don a disarmed PFD. However, because of the ease of inspection, it is the Coast Guard's position that these systems will greatly assist boaters in determining whether their inflatable PFD is properly armed and will promote more frequent checks on the status of inflation systems. Making the task of checking the status of the inflation system easy, and maximizing the chances of making a correct determination, are two key elements in improving the readiness and safe use of inflatable PFDs. Accordingly, the standards adopted by this IFR require one of two levels of performance for self-inspection systems that are designed with features to promote ease of use.

The comment also stated that the new specifications should not prohibit the use of disposable, one-time inflation systems that can be replaced after each use, when the indicator shows that the inflation system has been used.

The Coast Guard notes that disposable inflation mechanisms are currently the only available inflation systems that can provide complete arming status indication and the standards adopted in this IFR allow for the use of disposable inflation systems.

A comment from another PFD manufacturer agreed with the desirability of self-inspection, but stated that any such requirements would be beyond the ''state-of-the-art,'' because there is no known reliable method to indicate the state of the CO_2 cylinder charge without removing the cylinder and inspecting the piercing face for evidence of a puncture. Therefore, the

comment considers the ability to determine cylinder charge status as part of the self-inspection criteria to be an unreasonable requirement.

The Coast Guard disagrees. As stated above, affordable, disposable inflators have been made that accomplish this task, making such a requirement reasonable. Additionally, reusable inflators have been demonstrated which should be available in the near future.

Another issue raised by this PFD manufacturer was that the inflatable PFD standard should not attempt to anticipate unlikely misuse, such as reinstallation of a spent cylinder, in the self-inspection requirements.

The Coast Guard notes that according to the PFD studies cited previously, users may have frequently reinstalled spent cylinders. The Coast Guard agrees that because of the limited number of systems available at this time which are capable of indicating the reinstallation of a spent cylinder, the standards should not require that all systems have such a capability. Only unconditionally approved PFDs (Type I, II, and III) must be capable of indicating this common misuse whether intentional or unintentional. Therefore, on these PFDs which do not have conditional approval, boaters will get the extra assurance of inflators that minimize possible misuse.

Three comments from PFD manufacturers suggested that available inflation mechanisms which indicate the activation of automatic or manual inflation systems by the presence or absence of a pin or clip, or a port window subject to a change in color are sufficient to indicate that the cylinder has been spent.

The two independent inflatable PFD studies mentioned above have shown the need for better human factors design in these systems. Under this IFR, the Coast Guard is adopting standards for systems that utilize user-installed pins or clips as a lower performing indicating system. The Coast Guard will continue to review new systems as they become available and, when appropriate, adopt upgraded standards as more designs become available that improve the chances of correct status determination of inflation system readiness.

These same PFD manufacturers stated that self-inspection issues are best addressed in user manuals or labels on the inflatable PFD rather than through standards on PFD designs. The Coast Guard disagrees. While instructions and labels can help, they are a poor substitute for designs of emergency equipment that take human nature into account. Systems designed with good human factors have indicators that most users understand instinctively and aid in proper rearming and operation of PFD inflation systems, thereby enhancing the PFD's lifesaving potential.

PFDs Approved Only When Worn.

In a discussion of the public's expected acceptance of inflatable PFDS, the November 9, 1993 ANPRM discussed industry's experience in marketing hybrid PFDs. The ANPRM stated that the hybrid PFD's lack of wide usage by the public may be due to the fact that hybrid PFDs do not count toward the satisfaction of carriage requirements unless they are worn. PFDs with such ''conditional approval'' are labelled ''approved only when worn''. This requirement was intended to ensure that these PFDs are properly maintained. The ANPRM suggested that if the inflation systems of inflatable PFDs were required to have indicating devices to show if the inflation system requires servicing or re-arming, the Coast Guard would consider not requiring inflatable PFDs to be worn. The ANPRM further suggested that an inflatable PFD which lacks an indicating device could be labelled as a Type V PFD and be approved only when worn, to increase the likelihood that such inflatable PFDs are maintained in a serviceable condition.

Nearly all of the PFD manufacturers and the boat owners association were opposed to an ''approved only when worn'' requirement for inflatable PFDs, because requiring constant wear would be a deterrent to buyers. Another comment from a PFD manufacturer stated that an ''approved only when worn'' criterion does not ensure that boaters will inspect their PFDs as was implied in the discussion of this issue in the ANPRM.

The Coast Guard agrees that boaters were discouraged from buying those hybrid PFDs which are ''required to be worn,'' and that such a requirement only indirectly helps to encourage boaters to inspect their PFDs. Further, fewer sales of highly wearable inflatable PFDs will frustrate the Coast Guard's goal of increasing the total number of people wearing PFDs. Moreover, as discussed above, there have been many improvements to inflatable PFD designs. Therefore, the standards adopted by this IFR provide for approval of inflatable Type I, II, and III PFDs without conditions on their approval.

However, the Coast Guard notes that several factors contributed to the negative reaction to conditional approval of hybrid PFDs. For instance, the hybrid PFD designs were hot, bulky, and expensive. It is the Coast Guard's position that conditional approval can play a valuable role in the approval of unique and novel inflatable PFD designs which are much more cool, comfortable and less expensive than the hybrid designs. This role is discussed below under ''*PFD lifesaving potential evaluation*'' in the discussion of rules section.

A comment from the boat manufacturer stated that regulations need to be adopted requiring PFDs to be worn whenever an engine is in use, rather than the current requirement for PFDs to be on board.

The Coast Guard, in a future rulemaking, may consider a requirement for boaters to wear a PFD whenever the engine is running for specific PFD designs on a case-by-case basis during approval, and will consider the desirability of wider application of such a restriction in the future.

Another comment from a PFD manufacturer argued in favor of rules requiring individuals to wear a PFD, and allowing for the use of non-approved devices, including inflatables.

The Coast Guard is not adopting this suggestion. While Coast Guard regulations do not prohibit the carriage and use of non-approved PFDs, carrying such devices does not count toward meeting the carriage requirements. The quality and performance of PFDs that do not meet any specified standards is uncertain. The Coast Guard's position continues to be that in order to achieve the minimum acceptable level of safety and meet operational needs, only Coast Guard-approved devices, which must meet specified safety criteria, should be counted toward carriage requirements. A poorly manufactured device could fail to provide needed assistance, or a poorly designed device could actually perform such that the user is worse off than having no PFD.

Inflatable PFD Types

The ANPRM also stated that approval of Type I and II, as well as Type V inflatable PFDs with conditions on their use or that are intended for use in specific activities, will provide more choices suitable for a variety of different boating activities.

One comment from a PFD manufacturer stated that the Coast Guard should allow for approval of several inflatable PFD types rated at different levels of performance. The comment suggested that the highest performance inflatable PFD provide 35 pounds (150 N) of buoyancy, have dual chambers, an automatic, self-inspecting inflation system, and a high strength harness and lifting becket. The lowest performance inflatable PFD, according

to the comment, should provide 17 pounds (75 N) of buoyancy, have a single chamber, manual inflation with no requirements for a self-inspecting inflation system, a lower strength plastic buckle, and its use would be restricted to inland, protected waters.

The Coast Guard generally agrees with this comment and the concept of approving several types of PFDs (as discussed elsewhere), and standards for several types of devices are adopted in this IFR. However, the Coast Guard does not plan to approve PFDs with levels of performance which are as low as the manufacturer suggested.

In addition, while allowing lower performing PFDs and restricting their use to certain waters appears desirable, there is presently no workable scheme for implementing such a concept. Therefore, the Coast Guard seeks comments on the desirability of future development of standards for such lower performing devices and appropriate restrictions to place on their use, such as the types of waters on which such devices should be allowed.

Another PFD manufacturer stated that inflatable PFDs should be required to provide in-the-water survival characteristics which are at least equivalent to those currently required for approval of a Type I PFD. According to the comment, the difference in bulk between an inflatable PFD which provides 16 pounds (70 N) of buoyancy and one which provides 35 pounds (150 N) is not significant enough to affect wearability and therefore the Coast Guard should consider requiring 35 pounds of buoyancy for inflatable PFDs to enhance safety. The comment also suggested that type classifications for inflatable PFDs should be based upon characteristics, other than buoyancy and associated in-the-water performance, such as strength and intended use.

In the standards adopted by the Coast Guard in this IFR, Type II PFDs are required to have an automatic inflation system and the same buoyancy as Type I inflatables (150 N). Therefore, Type II PFDs have in-water survival characteristics equivalent to current Type I PFDs, but, unlike Type I PFDs, have only one inflation chamber. Type III PFDs have the same buoyancy as Type I inherently buoyant PFDs (100 N, 22 lb), but have less ability to turn the wearer face-up, and some designs may require the user to actuate the inflation system in order to float. Provision of a high strength harness and lifting becket is optional for all Types of inflatable devices. A range of Type V devices provide lower inflation system serviceability and indicator requirements than Types I, II and III inflatables. Belt-pack style designs which may require the user to complete the donning process after inflation, even after falling in the water, may also be approved under the alternate ''Life-Saving Index'' (LSI) procedures and might be either Type III or Type V devices with conditions on their approvals such as approved only when worn. (LSI procedures are discussed below under ''*PFD lifesaving potential evaluation*'' in the ''*Discussion of Rules*'' section.)

Another comment from a PFD manufacturer suggested that for a Type V inflatable PFD, manufacturers should be allowed to claim Type II performance when fully inflated, even if an automatic inflation system is not provided.

The Coast Guard agrees. Under this IFR the label on a Type V PFD described by the comment may explain that the device provides Type II in-water performance only after being inflated by the user.

Two Inflation Chambers

The ANPRM asked whether the standards should exempt all but the highest performing inflatable PFDs (Type I) from the requirement for two chambers, thereby reducing the cost of inflatable PFDs intended for most recreational boaters.

Four of the PFD manufacturers and the boat owners association agreed that the requirement for two inflation chambers should apply to Type I devices only. The Coast Guard agrees, and this IFR the Coast Guard adopts standards which limit the requirement for two chambers to Type I inflatable PFDs.

A PFD manufacturer asserted that dual chamber inflatable PFDs should have 100 percent redundant systems. The comment suggested that allowing dual chamber inflatables with a common membrane, rather than completely independent systems, seems to conflict with the purported reason for having dual chambers: to ensure that if any aspect of one system within a chamber fails, the other chamber will not be affected.

While the Coast Guard agrees that completely independent chambers would provide an additional small increment of redundancy and thereby safety, such a requirement would present design problems and increase cost. For independent chambers to add significantly to the safety of the device, they would need to be separated by a cut- and puncture-resistant layer, which could significantly reduce the wearability of inflatable PFDs. Therefore, it is the Coast Guard's position that the benefits of a requirement for a 100 percent redundant system are outweighed by the negative impacts on design and costs. However, manufacturers may provide such a system.

Restrictions for Non-Swimmers and Children

The ANPRM solicited comments regarding appropriate restrictions to be placed on the use of inflatable PFDs by non-swimmers and children; whether an automatic inflation mechanism should be required on PFDs designed for non-swimmers and children; or whether there should be no approval of inflatable PFDs for people in these categories.

One PFD manufacturer and the boat owners association stated that no restrictions should be placed on the use of inflatable PFDs by non-swimmers or children. However, another PFD manufacturer noted that in attempting to design inflatable PFDs suitable for children, unique design problems would arise, such as a need for tamper-proofing. This comment concluded that at present, inflatable PFDs are not suitable for children. Another PFD manufacturer suggested allowing for orally inflatable PFDs for children. According to this comment, an adult would partially inflate the PFD prior to the child boarding the boat, providing the child with ''inherent buoyancy''. Two other PFD manufacturers suggested postponing development of approved inflatable PFD types for children. One of those comments stated that the desirability of an inflatable PFD standard for children should be considered only after a review of acceptance and reliability data gathered on adult users.

The Coast Guard agrees with those comments that suggested that approval of inflatable PFDs for children is not appropriate at this time. The Coast Guard does not share the view that a partially inflated PFD provides inherent buoyancy. The issue of inflatable PFDs for children can be revisited after more experience is gained with the approval of inflatable PFDs for adults. Accordingly, this IFR adopts standards that address inflatable PFDs for adults only.

One of the PFD manufacturers also suggested that a ''child'' be classified as a person under 12 years of age. The Coast Guard's position is that, because of the importance of understanding how to properly use PFDs, only persons over 16 years of age are considered adults.

Regarding non-swimmers, one PFD manufacturer was opposed to a requirement for an automatic inflation

mechanism for non-swimmers and asserted that even the best automatic systems are prone to misfires or failures to fire. Several PFD manufacturers' comments seemed to favor requiring PFDs with automatic inflation mechanisms. One of those manufacturers favoring a requirement for an automatic inflation mechanism for non-swimmers suggested that alternatively, a non-swimmer should be required to wear the inflatable PFD fully inflated. Inflatable PFDs for non-swimmers, according to one of the manufacturers should provide a minimum of Type I performance. Two of these manufacturers pointed out, however, that law enforcement agencies will not be able to make a determination concerning a person's swimming abilities.

The Coast Guard acknowledges that there is no practical way that law enforcement officials can conduct a field assessment of swimming abilities. This would make a restriction against use by non-swimmers unenforceable. Therefore the Coast Guard is not placing any restrictions on the use of inflatable PFDs by non-swimmers.

One PFD manufacturer favored revising the PFD pamphlet to make boaters aware of the PFD's limitations by suggesting that they select an automatically inflatable PFD. Similarly, the boat owners association stated that non-swimmers should be made aware of the limitations of an inflatable PFD on the package at the point of purchase.

In this interim final rule, the labeling and PFD information pamphlet for these PFDs are required to explicitly state that the devices are not recommended for use by non-swimmers.

The Coast Guard considers the marking required to be on the PFDs and the required owner's manual and information pamphlet sufficient to inform adult non-swimmers of the pertinent facts regarding PFDs to enable them to make an informed choice when purchasing a PFD. The Coast Guard will review PFD information pamphlets to ensure that they include a clear statement regarding the risks a non-swimmer faces in using a particular type of inflatable PFD.

Self-Inspecting Inflation Systems

The ANPRM also asked about the average boater's ability to determine whether an inflatable PFD is in a serviceable condition if it has a ''self-inspecting'' inflation system.

Three PFD manufacturers and the boat owners association indicated that most recreational boaters have the ability to perform simple checks and tests to determine if a PFD is in a serviceable condition, even if it has only the simplest of indicators.

The Coast Guard disagrees that most boaters can determine the condition of older style inflation systems (those inflators not meeting the higher standards adopted by this IFR). In an informal survey at the National Association of State Boating Law Administrators (NASBLA) annual meeting, only two out of 18 participants were able to correctly identify the serviceability of four older style inflation mechanisms. Therefore, in this IFR, the Coast Guard adopts new requirements and a new test for status indicator recognition which have been added to the UL standard adopted for inflation systems (UL 1191).

Inflatable PFD Complexity

The ANPRM also asked whether inflatable PFDs are too complicated for some people to operate in an emergency situation.

Comments received on this issue from three PFD manufacturers and the boat owners association acknowledged that there will always be some individuals who do not understand mechanisms, and indicated that foolproof-PFDs cannot be designed. However, these comments contended that most boaters would be able to operate an inflatable PFD in an emergency situation. One of the comments stated that people who have difficulty responding in an emergency are the ones who will refrain from choosing an inflatable PFD. Another PFD manufacturer felt that there is a greater likelihood that an inflatable PFD will be worn in anticipation of an emergency which removes the complication of donning it under the extreme conditions of an emergency.

It is the Coast Guard's position that a strong Federal, State, and industry education effort is important in order to minimize unintended outcomes associated with people panicking upon sudden immersion or upon the malfunction of a manual or an auto-inflation mechanism. The marking, pamphlet, and manual instructions required to be provided with the PFDs will contribute significantly to this needed education. The Coast Guard will review the warning statements to ensure that the public is given sufficient information to enable them to determine whether use of an inflatable PFD is appropriate.

Inflatable PFD Costs

The ANPRM also asked for comments on what price the average boater will pay to purchase an inflatable PFD.

One PFD manufacturer stated that wide use of approved inflatable PFDs will occur only if they are priced much lower than the current non-approved inflatable PFDs. With their obvious advantages, according to the comment, inflatable PFDs are significantly more expensive than inherently buoyant PFDs that are sold at discount stores for less than 15 dollars. Based on the company's market research, the manufacturer feels that the lowest performance inflatable PFD providing 17 pounds (75 N) of buoyancy, a single chamber, a plastic buckle harness (with approximately 150 pound (670 N) breaking strength), and a manual inflation system, must be priced at less than $40 in order for the industry to see growth in the market. A single cell inflatable PFD providing 35 pounds (150 N) of buoyancy with an automatic inflation mechanism and plastic buckles must be priced at less than $95.

Two other comments from PFD manufacturers stated that it is unlikely that inflatable PFDs can be sold at a price which compares favorably with the price of existing inherently buoyant PFD types, but that sales of automatics with many features are more than double the sales of basic, manually inflated models. According to one of the comments, consumers tend to measure value according to obvious features of the inflatable PFD, rather than basic characteristics. Also, according to the comment, consumers may tend to consider all inflatable PFDs as equivalent, regardless of PFD type classification.

Another comment from the boat owners association stated that the price for an approved inflatable PFD should be comparable to currently available Type I and II PFDs. Another PFD manufacturer stated that while some boaters will spend $150 or more for an inflatable PFD, the average boater will probably only pay $25 to $50 depending on features.

The challenge, according to one of the other PFD manufacturers will be to avoid driving up costs by placing burdensome approval requirements on devices, such as increased numbers of chambers and high levels of destructive testing per lot manufactured. The comment also suggested that the higher cost of an inflatable PFD may encourage purchasers to properly care for their PFDs.

The Coast Guard generally agrees with most of the comments but notes that there is no evidence which indicates that the high cost of an inflatable PFD will encourage proper care. The Coast Guard appreciates the cost and pricing information supplied by the comments. Such information is useful in

developing standards that are cost efficient and in conducting regulatory evaluations. However, it should be understood that the Coast Guard has no authority to implement, nor will it engage in, regulation or other control of the price of inflatable PFDs, beyond avoiding the imposition of costly requirements for these PFDs that do not further the goal of achieving an appropriate level of safety.

Service Life for Inflatable PFDs

The ANPRM asked about the useful Service life that should be expected of inflatable PFDs.

A PFD manufacturer stated that based on the company's experience with inflatable aviation life vests, the average, well-maintained inflatable PFD has a useful service life of just under 10 years. According to this comment, generally, within 10 years, an inflatable PFD will be rendered non-serviceable due to fabric seal failure or fabric deterioration. This comment further explained that inflatable PFDs that are not well-maintained will fail due to holes or punctures within an average of five years. Another PFD manufacturer estimated a service life of at least eight years. A third PFD manufacturer stated that an inflatable PFD should have a service life of three years or more if properly maintained. Another comment from the boat owners association indicated that service life will be determined by the quality of care provided to the PFDs.

The Coast Guard is not prescribing a useful service life for inflatable PFDs. Instead, each manufacturer is given the flexibility to determine the service life appropriate to each inflatable PFD model and the manufacturer is required to state that service life in the owner's manual. The manufacturer must also provide information concerning appropriate care and storage of an inflatable PFD which will minimize damage or deterioration in the boating environment. The service life specified by the manufacturer is not an ''expiration date'' after which the PFD is no longer considered approved or serviceable. Rather, it is a guide for consumers making decisions about which PFD to buy, and how long they can expect it to be serviceable under the conditions described by the manufacturer.

Professional Servicing

The ANPRM asked whether a requirement for professional servicing of inflatable PFDs at ''approved'' servicing facilities would be appropriate.

Three inflatable PFD manufacturers supported professional PFD servicing; however, they suggested that professional servicing should not be mandatory and that the Federal government should not set up inspection facilities at taxpayer expense. Instead, the comments suggested that professional servicing be recommended rather than required and that the services be offered by the manufacturers or through licensed agents or both. One of these comments stated that the required owner's manual should provide instructions for owner inspection and identify where the owner can obtain help if needed. This comment further suggested that a fee schedule for common servicing procedures be provided if a manufacturer's toll free boater ''help line'' is not provided. Another of these comments stated that the Coast Guard should recommend annual user inspection for air leaks and that the manufacturer should offer servicing biannually at an affordable fee. The comment also stated that after 10 years the chamber should no longer be serviced and replacement should be recommended.

Another comment from the boat owners association stated that professional servicing would be unnecessary if quality is held to a high standard, and that requiring professional servicing would greatly increase the cost of owning an inflatable PFD.

The Coast Guard is not requiring professional servicing at this time. The PFD owner's manual is required to address both user servicing and provide information on how to obtain professional servicing. The Coast Guard strongly encourages manufacturers to offer professional servicing and to recommend it, in the owner's manual, no later than four years from the date of manufacture.

Discussion of Rules

The requirements for inflatable PFDs for use by recreational boaters adopted by this IFR are based primarily on the UL industry consensus standard discussed earlier and existing regulations for hybrid and inflatable PFDs. In several areas the regulations depart from these requirements as discussed below.

Approval Procedures

Many subparts of part 160 covering recreational PFDs require the use of recognized laboratories in conducting the tests and inspections required during the approval process. This rule requires that recognized laboratories enter into a memorandum of understanding (MOU) with the Coast Guard before conducting any approval activities with respect to an inflatable PFD. The NPRM (CGD 93–055) published elsewhere in today's edition of the **Federal Register** proposes the same requirement for other recreational PFDs. That NPRM contains a detailed discussion of the MOU requirements. The Coast Guard may modify the approval procedures for inflatable PFDs after consideration of the comments on the NPRM (CGD 93–055).

PFD Lifesaving Potential Evaluation

As an alternative to meeting the minimum performance requirements in UL 1180 as modified by this IFR, the Coast Guard, is allowing for the approval of PFD designs that have been evaluated according to the design's overall lifesaving potential. Each design would be evaluated against the ''Life-Saving Index'' (LSI). Under this method, specified characteristics are evaluated using a formula that would result in a number between zero and one. This number represents the design's lifesaving potential. For example, a device with an LSI of 0.43 would provide the user with a 43 percent chance of surviving an accident in which there is a potential for drowning. The Coast Guard has developed an initial set of LSIs for a number of currently approved PFD's and several broad categories of inflatable PFDs. A report of this work is included in the docket file for this rulemaking. To ensure that the characteristics of the PFD designs approved actually increase the probability that the PFDs reduce drownings in recreational boating, only designs that are found to have an LSI that is at least equal to the LSI of a Type III inherently buoyant device would be approved.

Using the formula in § 160.076–27, the Coast Guard has calculated the LSI for a Type III inherently buoyant PFD after assigning values for the terms in the LSI equation. The Coast Guard has established 0.375 as the LSI for this type of PFD. The assigned values are based on the characteristics of that PFD design and are included in the regulatory evaluation on file for this rulemaking. As provided by § 160.076–27, the Coast Guard will review the values used to calculate the Type III inherently buoyant PFD LSI annually, and publish any change of the LSI based on new boating statistics or other updated information.

A manufacturer seeking approval using the LSI evaluation will assign values to the various terms of the LSI equation which represent the various characteristics of the intended users and the PFD design, such as whether the likely users are swimmers or non-

swimmers; the chances that the PFD will be worn; and the probability that the inflation system will be properly activated. The values assigned for the characteristics of the manufacturer's proposed design would be reviewed by the recognized laboratory. The LSI equation would then be solved for the design. If the LSI of the manufacturer's design equals or exceeds the Coast Guard's assigned LSI value for a Type III inherently buoyant PFD, the manufacturer would submit to the Commandant the calculations, the values assigned to each term, statements justifying those values, and an explanation of any assumptions used in performing the calculation. The Commandant would review the material submitted by the manufacturer. The Commandant may then approve designs determined to validly demonstrate an LSI that is at least equal to the Coast Guard's assigned LSI of a Type III inherently buoyant design. The designs approved under the LSI evaluation method would not be required to meet certain provisions of the construction and performance requirements of § 160.076–23 and approval testing requirements of § 160.076–25.

One way to increase the LSI of a design is to require that the PFD be worn, and, accordingly, obtain approval for the device as a Type V PFD. For instance, preliminary calculations show that a belt-pack style PFD without conditional approval may have an LSI of 0.35. However, when the same PFD is approved only when worn, the belt-pack style PFD might have an LSI of 0.67. Therefore, manufacturers may designate conditions concerning use to achieve the LSI of a Type III inherently buoyant PFD. Manufacturers are free to fashion other methods that will enable their designs to achieve the required minimum LSI and submit the information for Commandant review.

The Coast Guard anticipates that examples of designs that would be readily approved under the UL requirements as modified by this IFR are: Type I with automatic inflation and indicator (of cylinder seal); Type II with automatic inflation and indicator. Examples of designs that would probably not meet the UL requirements as modified by this IFR but that may be able to be approved under the LSI evaluation are: Type III PFDs with type II performance, but with manual inflation and indicator; Type III yoke style PFDs with automatic inflation and indicator; Type V PFD with type II performance and automatic or manual inflation but without indicator (of cylinder seal); Type V yoke style PFD with type III performance and automatic inflation but without indicator; Type V yoke style PFD with performance type III and with manual inflation, with or without indicator; and Type V belt-pack style PFD with performance type III.

With the LSI evaluation, the Coast Guard will be able to approve unique and novel designs that offer lifesaving potential equal to or greater than that of approved devices, but that otherwise would not be made available to the boating public. These designs may prove to be very comfortable, affordable and popular with the boating public, and thereby increase the number of recreational boaters who wear PFDs. This will result in an increase in lives saved.

Because the designs approved under the LSI evaluation will be new and perhaps novel, the Coast Guard, manufacturers, and the public will not have the same level of experience and knowledge with the designs that they have with devices approved under the UL requirements as modified by this IFR. Therefore, to ensure that only designs that provide a sufficient level of safety to the boating public continue to hold Coast Guard approval, the Commandant will annually review the designs approved under the LSI evaluation. At that time, the devices will be compared to other approved devices and the Coast Guard will evaluate the relative weight and values of the various characteristics that were initially used in the LSI calculation. Recognized laboratories will maintain a ranking of the PFDs approved under this method and submit the information to the Commandant to assist in the annual reviews. If after the review the Coast Guard determines that the device does not provide a minimum level of lifesaving potential as required by § 160.076–27, the approval on that design may be terminated or suspended. To retain Coast Guard approval, the PFD design would have to be modified to meet the requirements of § 160.076–27. However, if an approval is terminated or suspended, the manufacturer's inventory of completed PFDs could continue to be sold unless the Coast Guard determines that the design presents a significant hazard to users of those PFDs.

User Awareness

The biggest problem in reducing the approximately 670 recreational boating drownings annually is that of getting the individual boater to take the preventive measure of wearing a PFD and, in the case of an inflatable PFD, keeping it in a serviceable condition. The approval of inflatables is not intended to make it easier for boaters to satisfy PFD carriage requirements, but rather to encourage boaters to change their current behavior patterns and provide them with a more convenient means to protect themselves from the tragedy of a serious boating accident. In establishing the LSI evaluation and conditional approvals, the Coast Guard hopes to approve new and unique designs that will encourage the wearing of PFDs by a greater number of boaters. This wide range of options should encourage boaters to make informed decisions that could save their lives.

The Coast Guard seeks to develop an incentive system to get both boaters and manufacturers more involved in preventing drowning. As mentioned above, manufacturers will be able to obtain conditional approvals for PFDs which might otherwise fail to meet some of the more stringent requirements. The practical effect for boaters purchasing PFDs with conditional approvals which, for example, are approved only when worn, is that boaters will be given the option of buying a less expensive PFD. The manufacturer will be responsible for clearly communicating the boater's responsibility for compliance with the approval conditions or, if the boater fails to comply with the conditions, the need to provide an additional PFD, without conditional approval, to meet the carriage requirements.

Since boaters appear to prefer unconditionally approved PFDs, this system will encourage manufacturers to develop innovative ways to increase the lifesaving potential of PFDs without relying on conditional approval.

Also, conditional approval used in this way will raise the awareness of boaters as to what they can do to contribute to improving boating safety, and will give them more freedom of choice.

PFD Information Pamphlet

Title 33 CFR 181, subpart G requires that an information pamphlet be provided with each PFD sold or offered for sale for use on recreational boats. UL standard 1180 does not yet contain pamphlet requirements for inflatable PFDs. However, UL has reserved a section and plans to add the pamphlet requirements at a later date. When an industry standard is available for such pamphlets the Coast Guard will review it and, if appropriate, propose it for incorporation in the Coast Guard rules. Section 160.076–35 established by this IFR requires inflatable PFD manufacturers to provide information pamphlets that have been submitted to and approved by the Commandant. The purpose of the information pamphlet is

to ensure that prospective PFD purchasers receive information at the point of purchase necessary to select PFDs that are appropriate for them and their boating activities. Factors for boaters to consider include their body type, ability to swim, and the types of activities in which they will participate. The manufacturer is required to include an explanation in the pamphlet of the necessity to maintain an inflatable PFD in operational condition, and that if the user fails to appropriately maintain an inflatable PFD, it will not provide adequate safety.

Information in the pamphlets must be accessible to the prospective buyer at the point of sale. Once a pamphlet's contents are approved, each pamphlet provided by the manufacturer for the same PFD design must be printed exactly as approved by the Commandant or recognized laboratory. A sample layout with text is provided in appendix I to this IFR and copies may be obtained by contacting the Commandant as directed under **FOR FURTHER INFORMATION CONTACT.**

Owner's Manual

The owner's manual required by UL 1180 and § 160.076–37 must be submitted to the Coast Guard or recognized laboratory for review and approval. The Coast Guard will review the manual to ensure that it meets the requirements of § 160.076–37 and UL 1180. The owner's manual must warn against hazardous misuse, such as wearing the PFD under restrictive clothing. This IFR allows the pamphlet and owner's manual to be combined if selection and warning information are included on the PFD packaging.

PFD Approval Type vs. Performance Type

As written, UL 1180, which covers only wearable PFDs, designates PFDs in terms of their ''performance type''. The current Coast Guard PFD approval system designates PFDs in terms of a combination of the PFD's in-water performance and other characteristics. The Coast Guard approval types are: Types I, II, and III which are all wearable PFDs that have different in-water performance characteristics; Type IVs, which are all throwable PFDs; and Type Vs, which all have conditions on their approvals. Both the UL standard and this IFR introduce an additional classification factor forinflatable PFDs, i.e., their level of maintainability and serviceability.

This IFR departs from the UL standard in two important ways, as discussed below.

In the UL standard, PFDs with inflation system indicators with 2F and 3F use codes may be classified as performance Type II or III PFDs. However, the Coast Guard is requiring inflation system indicators with a 1F use code on all PFDs unless other features and methods are used to achieve the minimum LSI required by § 160.076–27. It is the position of the Coast Guard that a design with an inflation system indicator with 2F or 3F use code needs additional features to achieve adequate overall lifesaving potential, as discussed in the regulatory analysis on file in the rulemaking docket.

The other important departure from the UL standard in this IFR is that UL 1180 would allow belt-pack style PFDs that require secondary donning to be approved as performance type III PFDs. The Coast Guard's position, however, is that the difficulty in accomplishing second stage donning lowers the overall lifesaving potential of these PFDs. Therefore, additional features or methods are necessary to ensure that such a device provides adequate safety to the user. For example, a requirement that such PFDs be worn would elevate the LSI of the device such that it could be approved in accordance with the LSI requirements of § 160.076–27.

Meeting Uninspected Commercial Vessel Carriage Requirements

The Coast Guard is evaluating the desirability of allowing uninspected commercial vessels to use inflatable PFDs meeting the requirements of subpart 160.076 to meet the applicable PFD carriage requirements. Under the current regulations, these inflatable PFDs may only be carried and used on these vessels as additional equipment. Comments are therefore requested on two specific issues.

For uninspected vessels not carrying passengers for hire, the Coast Guard encourages crew members working in exposed locations to wear a PFD. PFDs meeting the requirements of subpart 160.076 could be worn while working. However, it is the Coast Guard's position that these PFDs should not be the only type of PFD carried and used unless they have been shown to have adequate durability for the intended service. Commercial hybrid PFDs are more suitable as the only required PFD. The Coast Guard requests comments on this matter.

Another matter on which the Coast Guard seeks comment pertains to uninspected vessels carrying passengers for hire. The Coast Guard is considering, as the subject of a future rulemaking, requiring the master to identify, by position, the person responsible for keeping the inflatable PFD devices serviceable and properly armed. Also, the Coast Guard seeks comments on whether the frequency of required inspections and checks should be established in the regulations. The Coast Guard seeks comments regarding these issues as well as the desirability of approving inflatable PFDs meeting the requirements of subpart 160.076 as the sole PFD for each person on board.

Number of Lives To Be Saved

In both 1992 and 1993, approximately 670 recreational boating fatalities due to drowning occurred each year. The Coast Guard estimates that if two-thirds of boaters wore the inflatable PFDs to be approved under this rule, there would be 210 fewer recreational boating fatalities due to drowning each year. Unfortunately, even if inflatable PFDs are accepted by boaters, it will take time for boaters to change their behavior and for inflatable PFDs to replace their current PFDs. There is also no guarantee that inflatable PFDs will be worn or that two-thirds of boaters will buy them. However, it is believed that by the end of 2007 approximately 210 lives per year can be saved if an average wear rate of 66 percent is achieved.

Other Additions and Exceptions to UL Standards

In this IFR, the Coast Guard has supplemented the UL standards for inflatable PFDs and their components in several areas.

In § 160.076–3, the Coast Guard states that PFDs approved under subpart 160.076 may be used on recreational submersible vessels. Such PFDs would most likely be approved under the unique and novel provisions of the subpart as Type V PFDs.

Under § 160.076–21, inflation chamber materials must be of the same general quality as those used to pass the approval tests. Also, adhesives must be suitable for the intended application, and inflation mechanisms must be marked with a unique model number to prevent substitutions of less reliable devices (§ 160.076–31(f)).

In § 160.076–23, the design must not cause significant discomfort to the wearer during or after inflation; and fabrics must be treated to minimize unraveling.

Donning time for unconditionally approved PFDs must be more carefully controlled than conditionally approved PFDs which are approved only when worn. In § 160.076–25, donning time is relaxed for such conditionally approved PFDs because emergency donning should not be an issue. The PFD must

be able to be repacked by the test subjects used in the approval testing. Also, in this section the PFD must allow for good visibility by the wearer in the water, and survivor locating aids must be above the water. Finally, Type II PFDs must have an average freeboard of 110 mm (4.25 inches), which is consistent with Type I and III PFD requirements.

In § 160.076–39, required markings are specified for Type V conditionally approved PFDs. All inflatable PFDs must be marked with ''not approved for use on commercial vessels'' and with the inflation system model number. Inflation systems must be marked with their unique model number to minimize the possibility of the user installing an inappropriate inflation system. Finally, in order to standardize a vital instruction, the manual inflation handle must be clearly marked ''Jerk to inflate'' unless a universal symbol is used.

Production Quality Control and Laboratory Oversight

Section 160.076–19 establishes production quality assurance and laboratory oversight requirements for inflatable PFDs that are essentially the same as the recently modified procedures for approval of hybrid PFDs in subpart 160.077 (59 FR 2482; January 9, 1995) with minor revisions to waterproof marking requirements.

Incorporation by Reference

The following material is incorporated by reference in § 160.076–11: Fully Inflatable Recreational Personal Flotation Devices (UL 1180), first edition, May 15, 1995; Components for Personal Flotation Devices (UL 1191), May 16, 1995; Marine Buoyant Devices (UL 1123), February 17, 1995; American Society for Testing and Materials, ASTM D 751–79, Standard Methods of Testing Coated Fabrics, 1979; ASTM D 1434–75, Gas Transmission Rate of Plastic Film and Sheeting, 1975; ASTM F 1166–88 Human Engineering Design of Marine Systems Equipment and Facilities, 1988; and Federal Standards, Federal Test Method Standard No. 191A, July 20, 1978. Copies of the material are available for inspection where indicated under **ADDRESSES.** Copies of the material are available from the sources listed in § 160.076–11.

The Director of the Federal Register has approved the material in § 160.076–11 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The material is available as indicated in that section.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

A Regulatory Evaluation under paragraph 10e of the DOT regulatory policies and procedures has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES.** The Evaluation is summarized as follows.

The requirements of this IFR open up a new marketing opportunity for inflatable PFD manufacturers by allowing them to obtain Coast Guard approval of recreational inflatable PFDs, if they so choose. The IFR will also allow boaters to purchase and use inflatable PFDs on their boats, if they wish to do so. Manufacturers may still make and sell unapproved inflatable PFDs, and boaters may continue to use such PFDs as additional equipment. Manufacturers who wish to obtain approval will have to pay for the approval testing at the recognized laboratory, pay the cost of the required quality control and oversight, and provide the information pamphlet and manuals required by this rule.

The estimated total initial approval cost per inflatable PFD design is expected to be approximately $18,500, excluding the cost of inflation system acceptance which could be amortized over several designs of PFDs. Costs to approve other types of PFDs are approximately $6,000, excluding component acceptance costs. The additional cost to approve inflatable PFDs could easily be absorbed in the cost of the units produced. The cost increase per device would be small considering the number of devices which could be produced under authorization of each approval certificate. The Coast Guard anticipates that it will approve five to ten inflatable PFD designs within the first year after issuing this rule.

Production inspection costs imposed by these regulations will be approximately $1,000 for the largest size lot of inflatable PFDs permitted. This cost is similar to that incurred for other types of approved PFDs.

The retail cost, per device, is expected to be $50–$200 for inflatable PFDs. Currently approved PFDs range in price from $7–$200. Type I devices that could be replaced by inflatable PFDs have an average cost of about $40.

If total costs for these requirements including overhead is $2.00 per device, the total cost to the industry would be only $100,000 annually if 50,000 units per year are produced. Comments are invited on this analysis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Act. Although this rule is exempt, the Coast Guard has reviewed it for potential impact on small entities.

The requirements of this IFR open up a new marketing opportunity for inflatable PFD manufacturers by allowing them to obtain Coast Guard approval of recreational inflatable PFDs. The IFR will also allow boaters to purchase and use inflatable PFDs on their boats. As discussed above, the economic impact of the new requirements are expected to be minimal.

Therefore, the Coast Guard's position is that this rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

Under the Paperwork Reduction Act (44 U.S. C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, labelling, and other, similar requirements.

This rule contains collection-of-information requirements in the

sections listed below. The following particulars apply:

DOT No: 2115.

OMB Control No.: 2115–0141, 2115–0576, and 2115–0577.

Paperwork requirements	OMB control No.
a. § 160.076–13	2115–0619
b. § 160.076–21	2115–0619
c. § 160.076–29	2115–0619
d. § 160.076–31	2115–0619
e. § 160.076–33	2115–0619
f. § 160.076–35	2115–0619
g. § 160.076–37	2115–0619
h. § 160.076–39	2115–0619

Administration: U.S. Coast Guard.

Title: Reporting and Recordkeeping Requirements for Fire Fighting Equipment, Structural Fire Protection Materials, Lifesaving Equipment, and Marine Sanitation Devices; Instructional Material for Lifesaving, Fire Protection, and Emergency Equipment; Identification of Lifesaving, Fire Protection, and Emergency Equipment.

Need for Information: Production records are needed to verify compliance with the materials and quality control requirements in the production of this lifesaving equipment. Because PFDs are estimated to last up to 10 years, the Coast Guard is requiring manufacturers to retain production records for 120 months. Records that are also available from recognized laboratories are required to be retained for only 60 months (§ 160.076–33). Instructional materials are needed so that boaters can make an informed decision on the type of PFD best suited to their boating safety needs, and understand how to properly service their PFD or know when to get professional servicing or remove their inflatable PFD from service. Equipment identification (labelling) is needed to indicate that a PFD is Coast Guard approved, so that boaters know it is Coast Guard approved before buying it and to show boarding officers that the equipment meets the Coast Guard carriage requirements, any conditions on meeting those requirements, and so that boaters will be warned of possible dangerous conditions in using the PFDs. A Memorandum of Understanding (MOU) is needed to document the responsibilities of the laboratory and the Coast Guard in relation to equipment testing, inspection, and approval.

Proposed Use of Information: Production records will be used to verify that suitable materials are used and that quality control is exercised in production of this lifesaving equipment. Instructional materials are used to inform boaters of the types of PFD best suited to their boating safety needs, and how to properly service or know when to get professional service or remove their inflatable PFD from service. Equipment identification will be used to indicate to boaters which inflatable PFDs are approved, allow boaters to show that the PFDs meet the Coast Guard carriage requirements, convey any conditions on meeting those requirements and warn of possible dangerous conditions in using the PFDs. An MOU formally documents the responsibilities of the laboratory and the responsibilities of the Coast Guard in relation to equipment testing, inspection, and approval.

Frequency of Response: Production records are maintained by the manufacturers. No regular reporting is required. Instructional materials are provided with each PFD produced, but only reported to the recognized laboratory or the Coast Guard when approval is sought or when revised. Equipment identification is required on each PFD produced, but the initial label layout is the only response reported to the recognized laboratory or the Coast Guard when approval is sought or when revised.

An MOU is required only once, when a laboratory seeks to become a recognized laboratory for a particular classification of equipment.

Burden Estimate: The annual burden for the production of 50,000 inflatable PFDs by five manufacturers is estimated at approximately 100 hours for production records; 320 hours for instructional materials; and 83 hours for equipment identification industry-wide. The total annual burden for production of PFDs is estimated as 503 hours industry-wide.

The Coast Guard estimates that no more than one MOU per year would be developed. Drafting of the MOU should not require more than two weeks of effort for one person, for an annual burden of 80 hours. Copies of existing MOUs may be obtained from the Coast Guard and modified to meet the needs of the inividual laboratory and the Coast Guard.

Respondents: PFD production record respondents are the estimated five manufacturers that will produce Coast Guard approved inflatable PFDs for recreational boats.

MOU respondents are laboratories that seek to become recognized independent laboratories.

Form(s): No Federal forms are required.

Average Burden Hours per Respondent: 101 hours annually for each of the five manufacturers producing PFDs.

If the average recognized laboratory enters into a new or revised MOU once every five years, the average annual burden would be 16 hours.

The Coast Guard has submitted the requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under **ADDRESSES.**

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rulemaking establishes procedures for Coast Guard approval of inflatable PFDs. The authority to establish these requirements are committed to the Coast Guard by Federal statutes. Furthermore, since PFDs are manufactured and used in the national marketplace, safety standards for PFDs should be national in scope to avoid burdensome variances. Therefore, the Coast Guard intends this rule to preempt State action on the same subject matter.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under paragraph 2.B.2 of Commandant Instruction M16475.lB, this rule is categorically excluded from further environmental documentation. This rule has no environmental impact other than the beneficial impact of reducing the volume of unicellular plastic foam going into landfills as inherently buoyant devices are discarded when no longer serviceable. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 46 CFR Part 160

Marine safety, Reporting and recordkeeping requirements, Incorporation by reference.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR part 160 as follows:

PART 160—LIFESAVING EQUIPMENT

1. The authority citation for Part 160 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703 and 4302; E.O. 12234, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

2. Subpart 160.076, consisting of §§ 160.076–1 through 160.076–39, is added to read as follows:

Subpart 160.076—Inflatable Recreational Personal Flotation Devices

Sec.

160.076–1 Scope.
160.076–3 Applicability.
160.076–5 Definitions.
160.076–7 PFD approval Type.
160.076–9 Conditional approval.
160.076–11 Incorporation by reference.
160.076–13 Approval procedures for inflatable PFDs.
160.076–15 Suspension or termination of approval.
160.076–17 Approval of design or material changes.
160.076–19 Recognized laboratories.
160.076–21 Component materials.
160.076–23 Construction and performance requirements.
160.076–25 Approval testing.
160.076–27 LSI evaluation.
160.076–29 Production oversight.
160.076–31 Production tests and examinations.
160.076–33 Manufacturer records.
160.076–35 Information pamphlet.
160.076–37 Owner's manual.
160.076–39 Marking.

Subpart 160.076—Inflatable Recreational Personal Flotation Devices

§ 160.076–1 Scope.

(a) This subpart contains structural and performance standards for approval of inflatable recreational personal flotation devices (PFDs), as well as requirements for production follow-up inspections, associated manuals, information pamphlets, and markings.

(b) Inflatable PFDs approved under this subpart—

(1) Rely entirely upon inflation for buoyancy; and

(2) Are approved for use by adults only.

§ 160.076–3 Applicability.

Inflatable PFDs approved under this subpart may be used to meet the carriage requirements of 33 CFR 175.15 and 175.17 on the following types of vessels only:

(a) Recreational vessels.

(b) Uninspected recreational submersible vessels.

§ 160.076–5 Definitions.

As used in this part:

Commandant means the Chief of the Survival Systems Branch, U.S. Coast Guard Office of Marine Safety, Security, and Environmental Protection. Address: Commandant (G–MVI–3/14), U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC 20593–0001; phone: 202–267–1444; facsimile: 202–267–1069; electronic mail: ''mvi–3/G–M18@cgsmtp.comdt.uscg.mil''.

Conditional approval means a category of PFD which has condition(s) on its approval with which the user must comply in order for the PFD to be counted toward meeting the carriage requirements of the vessel being used. All conditionally approved PFDs are designated Approval Type V.

First quality workmanship means construction which is free from any defect materially affecting appearance or serviceability.

Inflation medium means any solid, liquid, or gas that, when activated, provides inflation for buoyancy.

Inspector means a recognized laboratory representative assigned to perform, supervise or oversee the duties described in §§ 160.076–29 and 160.076–31 of this subpart or any Coast Guard representative performing duties related to the approval.

LSI means the ''Life-Saving Index'', a number between zero and one, as determined in accordance with § 160.076–27, that represents the overall lifesaving potential of a particular PFD design.

MOU means memorandum of understanding which describes the approval functions a recognized independent laboratory performs for the Coast Guard, and the recognized independent laboratory's working arrangements with the Coast Guard.

Performance type means the in-water performance classification of the PFD (I, II, or III).

PFD means personal flotation device as defined in 33 CFR 175.13.

PFD Approval Type means the Type designation assigned by the Commandant, as documented in the approval certificate for the PFD, based primarily on the in-water performance and serviceability of the PFD.

Plans and specifications means the drawings, product description, construction specifications, and bill of materials submitted in accordance with § 160.076–13 for approval of a PFD design.

§ 160.076–7 PFD approval Type.

(a) An inflatable PFD may be approved without conditions as a Type I, II, or III PFD for persons over 36 kg (80 lb) if it—

(1) Meets the requirements of this subpart other than the requirements of § 160.076–27; or

(2) Meets the requirements of § 160.076–27 based on its Lifesaving Index (LSI).

(b) Each inflatable PFD that can be demonstrated to meet the in-water performance requirements of a type I, II or III PFD in UL 1180 during approval testing and the applicable requirements of this subpart provided that certain conditions are placed on its use, may be approved as a Type V PFD. Each such PFD has conditional approval.

§ 160.076–9 Conditional approval.

(a) A conditionally approved inflatable PFD is categorized as a Type V PFD and may be used to meet the Coast Guard PFD carriage requirements of 33 CFR part 175 only if the PFD is used in accordance with any requirements on the approval label. PFDs marked ''Approved only when worn'' must be worn whenever the vessel is underway and the intended wearer is not within an enclosed space if the PFD is intended to be used to satisfy the requirements of 33 CFR part 175. Note: Additional approved PFDs may be needed to satisfy the requirements of 33 CFR part 175 if ''Approved only when worn'' PFDs are not worn.

(b) Unless approved under the alternate LSI procedures in § 160.076–27 without conditions, PFDs meeting the performance specifications for type I, II, or III PFDs in UL 1180 may be classified as Type V, conditionally approved PFDs when—

(1) Indicator and serviceability use codes of less than 1F in accordance with UL 1191 are provided;

(2) The device requires secondary donning; or

(3) The Commandant determines that other performance or design characteristics of the PFD make such classification appropriate.

§ 160.076–11 Incorporation by reference.

(a) Certain materials are incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than the one listed in paragraph (b) of this section, the Coast Guard must publish notice of the change in the **Federal Register**, and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC and at the U.S. Coast Guard, Survival Systems Branch (G–MVI–3), 2100 Second Street, SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The materials approved for incorporation by reference in this subpart, and the sections affected are:

American Society for Testing and Materials (ASTM)

1916 Race St., Philadelphia, PA 19103

ASTM D 751–79 Standard Methods of Testing Coated Fabrics, 1979	160.076–25;
ASTM D 1434–75 Gas Transmission Rate of Plastic Film and Sheeting, 1975	160.076–25;
ASTM F 1166–88 Human Engineering Design for Marine Systems, Equipment and Facilities, 1988.	160.076–37.

Federal Standards

Naval Publications and Forms Center, Customer Service, Code 1052, 5801 Tabor Ave., Philadelphia, PA 19120

In Federal Test Method Standard No. 191A (dated July 20, 1978) the following methods:

(1) Method 5100, Strength and Elongation, Breaking of Woven Cloth; Grab Method	160.076–25;
(2) Method 5132, Strength of Cloth, Tearing; Falling-Pendulum Method	160.076–25;
(3) Method 5134, Strength of Cloth, Tearing; Tongue Method	160.076–25.

Underwriters Laboratories (UL)

Underwriters Laboratories, Inc., P.O. Box 13995, Research Triangle Park, NC 27709–3995 (Phone (919) 549–1400; Facsimile: (919) 549–1842)

UL 1123, ''Marine Buoyant Devices'', February 17, 1995	160.076–35;
UL 1180, ''Fully Inflatable Recreational Personal Flotation Devices'', May 15, 1995	160.076–7; 160.076–21; 160.076–23; 160.076–25; 160.076–27; 160.076–29; 160.076–31; 160.076–37; 160.076–39;
UL 1191, ''Components for Personal Flotation Devices'', May 16, 1995	160.076–21; 160.076–25; 160.076–39.

§ 160.076–13 Approval procedures for inflatable PFDs.

(a) Manufacturers seeking approval of an inflatable PFD design shall follow the procedures of this section and subpart 159.005 of this chapter.

(b) Each application for approval of an inflatable PFD must contain the information specified in § 159.005–5 of this chapter. The application must be submitted to a recognized laboratory. One copy of the application and, except as provided in paragraph (c)(2) of this section, a prototype PFD must be submitted to the Commandant for preapproval review. If a similar design has already been approved, the Commandant may authorize the recognized laboratory to waive the preapproval review under §§ 159.005–5 and 159.005–7 of this chapter.

(c) The application must include the following:

(1) Plans and specifications containing the information required by § 159.005–12 of this chapter, including drawings, product description, construction specifications, and bill of materials.

(2) The information specified in § 159.005–5(a)(2) (i) through (iii) of this chapter must be included in the application, except that, if preapproval review has been waived, the manufacturer is not required to send a prototype PFD sample to the Commandant.

(3) The type of performance (Type I, II, or III) that the PFD is designed to provide along with the Approval Type sought (Type I, II, III, or V).

(4) Any special purpose(s) for which the PFD is designed and the vessel(s) or vessel type(s) on which its use is intended.

(5) Buoyancy, torque, and other relevant tolerances to be met during production.

(6) The text of any optional marking to be included on the PFD in addition to the markings required by § 160.076–39.

(7) A draft of the information pamphlet required by § 160.076–35.

(8) A draft of the owner's manual required by § 160.076–37.

(9) For any conditionally approved PFD, the intended approval condition(s).

(10) Whether approval is sought under the LSI provisions of § 160.076–27.

(d) The description required by § 159.005–9 of this chapter of quality control procedures may be omitted if the manufacturer's planned quality control procedures meet the requirements of §§ 160.076–29 and 160.076–31.

(e) *Manual and pamphlet.* Before granting approval of a PFD design, the Commandant may require changes to the manual and information pamphlet submitted for review to ensure compliance with the requirements of §§ 160.076–35 and 160.076–37.

(f) *Waiver of tests.* A manufacturer may request that the Commandant waive any test prescribed for approval under this subpart. To request a waiver, the manufacturer must submit to the Commandant and the recognized laboratory, one of the following:

(1) Satisfactory test results on a PFD of sufficiently similar design as determined by the Commandant.

(2) Engineering analysis demonstrating that the test for which a waiver is requested is not appropriate for the particular design submitted for approval or that, because of its design or construction, it is not possible for the PFD to fail that test.

(g) *Alternative requirements.* A PFD that does not meet the requirements of this subpart may be approved by the Commandant if the device—

(1) Meets other requirements prescribed by the Commandant in place of or in addition to the requirements of this subpart; and

(2) As determined by the Commandant, provides at least the same degree of safety provided by other PFDs that meet the requirements of this subpart.

§ 160.076–15 Suspension or termination of approval.

As provided in § 159.005–15 of this chapter, the Commandant may suspend or terminate the approval of an inflatable PFD design if the manufacturer fails to comply with this subpart or the recognized laboratory's accepted procedures or requirements.

§ 160.076–17 Approval of design or material changes.

(a) The manufacturer must submit any proposed changes in design, material, or construction to the recognized laboratory and the Commandant for approval before changing PFD production methods.

(b) Determinations of equivalence of design, construction, and materials may be made only by the Commandant or a designated representative.

§ 160.076–19 Recognized laboratories.

(a) *PFDs.* The following laboratories are recognized under § 159.010–9 of this chapter to perform the approval and production oversight functions required by this subpart:

Underwriters Laboratories, Inc., 12 Laboratory Drive, P.O. Box 13995,

Research Triangle Park, NC 27709–3995, (919) 549–1400.

(b) Components. The following laboratories are recognized under subpart 159.010 of this chapter and may perform the component material acceptance, production oversight, and certification functions required by § 160.076–21(a)(1):

Underwriters Laboratories, Inc., 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709–3995, (919) 549–1400.

§ 160.076–21 Component materials.

(a) Each component material used in the manufacturer of an inflatable PFD must—

(1) Meet the applicable requirements of subpart 164.019 of this chapter, UL 1191, UL 1180, and this section; and

(2) Be of good quality and suitable for the purpose intended.

(b) The average permeability of inflation chamber material, determined in accordance with the procedures specified in § 160.076–25(d)(2)(iii) must not be more than 110% of the permeability of the materials determined in approval testing required by § 160.076–25(d)(2)(iii).

(c) The average grab breaking strength and tear strength of the inflation chamber material, determined in accordance with the procedures specified in §§ 160.076–25(d)(2)(i) and 160.076–25(d)(2)(ii), must be at least 90% of the grab breaking strength and tear strength determined from testing required by §§ 160.076–25(d)(2)(i) and 160.076–25(d)(2)(ii). No individual sample result for breaking strength or tear strength may be more than 20% below the results obtained in approval testing.

(d) Each adhesive must be waterproof, appropriate for use with the materials being bonded, durable over the expected range of temperatures and humidity in which the PFD may be used, and resistant to chemicals commonly encountered in recreational boating.

(e) Unless approved under the provisions of § 160.076–27, each manual, automatic, and manual-auto inflation mechanism on each unconditionally approved PFD must have an indicator and a serviceability rating consistent with use code 1F in accordance with UL 1191.

(f) Each manual, automatic, or manual-auto inflation mechanism must be marked in accordance with § 160.076–39(e).

§ 160.076–23 Construction and performance requirements.

(a) Each inflatable PFD design must—

(1) Meet the requirements in UL 1180 applicable to the PFD performance type for which approval is sought, or the LSI requirements of § 160.076–27;

(2) Not cause significant discomfort to the wearer during and after inflation; and

(3) Meet any additional requirements that the Commandant may prescribe to approve unique or novel designs.

(b) All cut edges of textile materials must be permanently treated or sewn to minimize ravelling.

§ 160.076–25 Approval testing.

(a) To obtain approval of an inflatable PFD design, approval tests specified in UL 1180 and this section must be conducted or supervised by a recognized laboratory using PFDs that have been constructed in accordance with the plans and specifications submitted with the application for approval.

(b) Each PFD design must pass the tests required by UL 1180 and this section that are applicable to the PFD performance type for which approval is sought.

(c) In addition to the testing requirements of UL 1180, each design tested must meet the following requirements during the test specified:

(1) *Donning test.* (i) For unconditionally approved PFDs, the average time for donning on the first attempt, when tested in accordance with UL 1180 section 6.2, must not exceed 45 seconds. At least two-thirds of the subjects must successfully don the PFD on the first attempt.

(ii) PFDs not intended for a special purpose for which conditional approval is sought, except belt-pack style PFDs, need not comply with the donning times specified in UL 1180 and paragraph (c)(1)(i) of this section, but must be able to be donned within an average of 1.5 minutes.

(iii) PFDs intended for a special purpose for which conditional approval is sought need not comply with the donning times specified in UL 1180 and paragraph (c)(1)(i) of this section, but must be able to be donned within an average of 2.0 minutes.

(iv) Under UL 1180 section 6.2, the Commandant must be notified if more than one-fourth of any initial group of test subjects is disqualified based on tests with the reference vest.

(2) *Repack evaluation.* Each test subject participating in the tests in UL 1180, section 6 shall demonstrate that he or she can repack the PFD such that it can be used in the manual activation tests, and donning tests in sections 6.2.3, 6.4.1, and 6.4.2.

(3) *Flotation stability static measurements.* At the end of each test conducted in accordance with in UL 1180, section 6.9, for each subject—

(i) The freeboard must be measured and reported;

(ii) The subject when looking to the side, must be able to see the water's surface at a point within 3 m (10 ft.) from the subject's position and beyond; and

(iii) If provided, the PFD light and at least 75% of the retroreflective material on the outside of the PFD must be above the water.

(4) *Average requirements.* When conducting tests specified in UL 1180, section 6.9—

(i) The average freeboard for performance type II PFDs for all subjects must be 110 mm (4.25 in).

(ii) For all subjects, the average of the lowest mark on a vertical scale, which is placed 6 m (20 ft.) from and in front of the subject such that the subject can see it without moving his or her head, must be no higher than 0.3 m (12 in.) from the water level.

(d) Each PFD design must pass the following tests and evaluations:

(1) *Visual examination.* The complete PFD must be visually examined for compliance with the construction and performance requirements of §§ 160.076–21 and 160.076–23 and UL 1180 and 1191.

(2) *Inflation chamber properties.* The following tests must be conducted after successful completion of all other approval tests. The test samples used in the following tests must come from one or more PFDs that were each used in all the Use Characteristics Tests required by UL 1180 section 6.

(i) *Grab breaking strength.* The grab breaking strength of chamber materials must be determined in accordance with Method No. 5100 of Federal Test Method Standard 191 or ASTM D 751.

(ii) *Tear strength.* The tear strength of chamber materials must be determined in accordance with Method No. 5132 or 5134 of Federal Test Method Standard 191 or ASTM D 751.

(iii) *Permeability.* The permeability of chamber materials must be determined in accordance with ASTM D 1434 using CO2 as the test gas.

(iv) *Seam strength.* The seam strength of the seams in each inflation chamber of at least one PFD must be determined in accordance with ASTM D 751 except that 25 by 200 mm (1 by 8 in.) samples may be used where insufficient length of straight seam is available.

(e) *Additional tests.* The Commandant may prescribe additional tests for approval of novel or unique designs.

§ 160.076–27 LSI evaluation.

(a) Each manufacturer seeking approval of a PFD design using the

Lifesaving Index (LSI) must demonstrate, to the satisfaction of the Commandant, a minimum overall lifesaving potential, and a minimum effectiveness and reliability of the PFD design in accordance with this section.

(b) The manufacturer shall submit to the Commandant an analysis, accepted by a recognized laboratory, demonstrating the LSI of the design that includes—

(1) The LSI calculations using the formula provided in paragraph (d) of this section, and the value assigned to each term of the calculation;

(2) Statements justifying the value assigned to each term of the formula provided in paragraph (d) of this section; and

(3) Explanation of any assumptions used in performing the required calculation.

(c) *Minimum LSI.* Each PFD design approved under this section must be demonstrated to have an LSI that is not less than that of a Type III inherently buoyant PFD. The Commandant will determine the LSI of a Type III inherently buoyant PFD using the equation in paragraph (d) of this section and will publish the LSI value annually.

(d) *Equation and terms.* (1) The LSI must be determined by the following equation:

$$LSI = \sum_{i=1}^{8} P_i + P_k$$

Where:

P_i = Probability associated with the ith ou0tcome, where each outcome is a sequence of events where the PFD will aid in the user's survival. Each sequence of events must be mutually exclusive.

And P_i is defined by the following equations:

$P_1 = (S1)(W_{S1})(I1_{S1})(E)(R)$
$P_2 = (S1)(W_{S1})(I2_{S1})(SA1_{S1})(SDS1)(E)(R)$
$P_3 = (S1)(W_{S1})(I3_{S1})(SA1_{S1})(E)(R)$
$P_4 = (S1)(W_{S1})(I3_{S1})(SA2_{S1})(E_{S1,I3})(R)$
$P_5 = (S2)(W_{S2})(I1_{S2})(E)(R)$
$P_6 = (S2)(W_{S2})(I2_{S2})(SA1_{S2})(SD_{S2})(E)(R)$
$P_7 = (S2)(W_{S2})(I3_{S2})(SA1_{S2})(E)(R)$
$P_8 = (S2)(W_{S2})(I3_{S2})(SA2_{S2})(E_{S2,I3})(R)$
P_k = The probability of other sequences of events that significantly enhance the lifesaving potential of the PFD under consideration.

The terms used in the P_i equations are defined as follows:

S1 = Probability PFD user can swim.
S2 = Probability PFD user cannot swim.
W = Probability PFD is worn prior to an accident. (W_{S1} for swimmer; W_{S2} for non-swimmer)
I1 = Probability PFD is used in a fully inflated condition prior to accident.
I2 = Probability PFD is used in an uninflated condition prior to accident.
I3 = Probability PFD is used in a partially inflated condition prior to accident.
SA1 = Probability of PFD inflating, including the probabilities of correct inflator rearming; inflator status check; and inflator its activated automatically, manually, or orally, as applicable.
SA2 = Probability of PFD not inflating.
SD = Probability of completing the donning process after inflation, if required, when the PFD is worn. (SD = 1 when no additional donning required.)
E = Probability PFD is effective in the water when inflated. ($E_{S1,I3}$, $E_{S2,I3}$ for partially inflated PFD and swimmer, non-swimmer, respectively)
R = Probability PFD is reliable.

(2) *Application of equation.* To determine the LSI for a PFD using the equation in paragraph (d)(1) of this section, the calculations must be performed in accordance with the following:

(i) For inherently buoyant PFDs, use only equations P_1 and P_5, with I1 equal to 1.

(ii) For non-belt-style inflatable PFDs, all P_i equations apply.

(iii) For belt-pack style PFDs, use only equations P_1, P_2, P_5, and P_6, with I1 meaning that the PFD is fully donned and inflated.

(e) *Minimum effectiveness and reliability.* In addition to meeting the requirements of paragraph (c) of this section, each PFD design approved under this section must be demonstrated to possess the following characteristics:

(1) Inflated in-water effectiveness (E), that is not less than that of—

(i) A performance type I PFD in accordance with UL 1180 for Type I approval or equivalent;

(ii) A performance type II PFD in accordance with UL 1180 for Type II approval or equivalent; or

(iii) A performance type III PFD in accordance with UL 1180 for Type III approval or equivalent; and

(2) Reliability (R) that is not less than that of—

(i) A performance type I PFD in accordance with UL 1180 for Type I approval or equivalent; or

(ii) A performance type II PFD in accordance with UL 1180 for Type II and III approval or equivalent.

(f) *Ranking.* The recognized laboratory shall compile a ranking, according to the calculated LSI, of PFDs for which approval is sought under this section and submit to the Commandant the characteristics affecting wearability, effectiveness, and reliability of the PFDs ranked immediately above and immediately below the PFD for which approval is sought.

(g) *Review.* The Commandant may annually review each analysis and design approved under this section to determine whether the design continues to provide the minimum LSI and level of effectiveness and reliability required by paragraphs (c) and (e) of this section. The Commandant will compare the values assigned to the characteristics of the device to the values assigned to other approved devices in determining whether the values were appropriately assigned and whether the LSI should be recalculated. Where recalculated LSIs of approved designs fall below the minimum required LSI established by the Commandant in accordance with paragraph (c) of this section, the approval will be terminated or suspended in accordance with § 159.005–15 of this chapter.

§ 160.076–29 Production oversight.

(a) Production tests and inspections must be conducted in accordance with this section and subpart 159.007 of this chapter unless the Commandant authorizes alternative tests and inspections. The Commandant may prescribe additional production tests and inspections necessary to maintain quality control and to monitor compliance with the requirements of this subpart.

(b) Production oversight must be performed by the same laboratory that performs the approval tests unless the Commandant determines that the employees of an alternative laboratory have received training and have access to the same information as the inspectors of the laboratory that conducted the approval testing.

(c) In addition to responsibilities set out in part 159 of this chapter and the accepted Laboratory Follow-up Procedures, each manufacturer of an inflatable PFD and each recognized laboratory inspector shall comply with the following, as applicable:

(1) *Manufacturer.* Each manufacturer must—

(i) Except as provided in paragraph (e)(2) of this section, perform all required tests and examinations on each PFD lot before any required inspector's tests and inspection of the lot;

(ii) Follow established procedures for maintaining quality control of the materials used, manufacturing operations, and the finished product;

(iii) Implement a continuing program of employee training and a program for maintaining production and test equipment;

(iv) Admit the inspector to any place in the factory where work is done on PFDs or component materials, and where parts or completed PFDs are stored;

(v) Have an inspector observe the production methods used in producing the first PFD lot and observe any revisions in production methods made thereafter; and

(vi) Allow the inspector to take samples of completed PFDs or of component materials for tests required by this subpart and for tests relating to the safety of the design.

(2) *Recognized laboratory oversight.* An inspector from a recognized laboratory shall oversee production in accordance with the MOU. During production oversight, the inspector shall not perform or supervise any production test or inspection unless—

(i) The manufacturer has a valid approval certificate; and

(ii) The inspector has first observed the manufacturer's production methods and any revisions to those methods.

(3) The inspector must perform or supervise testing and inspection of at least one in each five lots of PFDs produced.

(4) During each inspection, the inspector must check for compliance with the manufacturer's quality control procedures.

(5) Except as provided in paragraph (c)(6) of this section, at least once each calendar quarter, the inspector must examine the manufacturer's records required by § 160.076–33 and observe the manufacturer perform each of the tests required by § 160.076–31(c).

(6) If less than six lots are produced during a calendar year, only one lot inspection and one records' examination and test performance observation are required during that year. Each lot tested and inspected under paragraph (c)(3) of this section must be within seven lots of the previous lot inspected.

(d) *PFD lots.* A lot number must be assigned in accordance with UL 1180 to each group of PFDs produced. Lots must be numbered serially. A new lot must be started whenever any change in materials or a revision to a production method is made, and whenever any substantial discontinuity in the production process occurs. Changes in lots of component materials must be treated as changes in materials. The lot number assigned, along with the approval number, must enable the PFD manufacturer, by referring to the records required by this subpart, to determine the supplier of the components used in the PFD and the component supplier's identifying information for the component lot.

(e) *Samples.* For the tests, examinations, and inspections required by § 160.076–31, inspectors and manufacturers shall select samples as provided in this paragraph.

(1) Samples shall be selected at random from a lot in which all PFDs or materials in the lot are available for selection. Except as provided in § 160.076–31(c), samples must be selected from completed PFDs.

(2) Different samples must be selected for the manufacturer's and inspector's tests, except, if the total production for any five consecutive lots does not exceed 250 PFDs, the manufacturer's and inspector's tests may be run on the same sample(s) at the same time.

(3) The number of samples selected per lot must be at least equal to the applicable number required by Table 160.076–29A for manufacturers or Table 160.076–29B for inspectors.

(4) The following additional requirements apply as indicated in Table 160.076–29A to individual sample selections by manufacturers:

(i) Samples must be selected from each lot of incoming material. The tests required under paragraphs 160.076–25(d)(2)(i) through 160.076–25(d)(2)(iv) prescribe the number of samples to select.

(ii) Samples selected for the indicated tests may not be used for more than one test.

(iii) If a sample fails the over-pressure test, the number of samples to be tested in the next lot produced must be at least two percent of the total number of PFDs in the lot or 10 PFDs, whichever is greater.

(iv) The indicated test must be conducted at least once each calendar quarter or whenever a new lot of material is used or a production process is revised.

(5) The following additional requirements apply as indicated in Table 160.076–29B to individual sample selections by inspectors:

(i) Samples selected for the indicated tests may not be used for more than one test.

(ii) The indicated test may be omitted if it was conducted by the manufacturer on the materials used and by the inspector on a previous lot within the past 12 months.

(iii) One sample of each means of marking on each type of fabric or finish used in PFD construction must be tested at least every six months or whenever a new lot of materials is used.

TABLE 160.076–29A—MANUFACTURER'S SAMPLING PLAN

	Number of samples per lot—lot size:					
	1–100	101–200	201–300	301–500	501–750	751–1000
Tests:						
Inflation Chamber Materials	See Note [a]					
Seam Strength	1	1	2	2	3	4
Over-pressure [a c]	1	2	3	4	6	8
Air Retention	Every Device in the Lot					
Buoyancy & Inflation, Medium Retention	1	2	3	4	6	8
Tensile Strength	See Note [d]					
Detailed Product Examination	2	2	3	4	6	8
Retest Sample Size [b]	.....	.....	13	13	20	20

TABLE 160.076–29A—MANUFACTURER'S SAMPLING PLAN—Continued

	Number of samples per lot—lot size:					
	1–100	101–200	201–300	301–500	501–750	751–1000
Final Lot Inspection	Every Device in the Lot					

Notes to Table:
[a] See \@ 160.076–29(e)(4)(i).
[b] See \@ 160.076–29(e)(4)(ii)
[c] See \@ 160.076–29(e)(4)(iii).
[d] See \@ 160.076–29(e)(4)(iv).

TABLE 160.076–29B—INSPECTOR'S SAMPLING PLAN

	Number of samples per lot—lot size:					
	1–100	101–200	201–300	301–500	501–750	751–1000
Tests:						
Over-pressure [a]	1	1	2	2	3	4
Air Retention	1	1	2	2	3	4
Buoyancy & Inflation, Medium Retention	1	1	2	2	3	4
Tensile Strength	See Note [b]					
Waterpoof marking	See Note [c]					
Detailed Product Examinaton	1	1	1	2	2	3
Retest Sample Size [a]	10	10	13	13	20	20
Final Lot Inspection	10	15	20	25	27	30

Notes to Table:
[a] See/@160.076–29(e)(5)(i).
[b] See/@160.076–29(e)(5)(ii).
[c] See/@160.076–29(e)(5)(iii).

(f) *Accept/reject criteria: manufacturer testing.* (1) A PFD lot passes production testing if each sample passes each test.

(2) In lots of 200 or less PFDs, the lot must be rejected if any sample fails one or more tests.

(3) In lots of more than 200 PFDs, the lot must be rejected if—

(i) One sample fails more than one test;

(ii) More than one sample fails any test or combination of tests; or

(iii) One sample fails one test and in redoing that test with the number of samples specified for retesting in Table 160.076–29A, one or more samples fail the retest.

(4) A rejected PFD lot may be retested only if allowed under § 160.076–31(e).

(g) *Accept/reject criteria: independent laboratory testing.* (1) A lot passes production testing if each sample passes each test.

(2) A lot must be rejected if—

(i) A sample fails more than one test;

(ii) More than one sample fails any test or combination of tests; or

(iii) One sample fails one test and in redoing that test with the number of samples specified for retesting in Table 160.076–29B, one or more samples fail the test.

(3) A rejected lot may be retested only if allowed under § 160.076–31(e).

(h) *Facilities and equipment.* (1) *General.* The manufacturer must provide the test equipment and facilities necessary for performing production tests, examinations, and inspections, unless Commandant has accepted testing at a location other than the manufacturer's facility.

(2) *Calibration.* The manufacturer must have the calibration of all test equipment checked at least every six months by a weights and measures agency or the equipment manufacturer, distributor, or dealer.

(3) *Facilities.* The manufacturer must provide a suitable place and the necessary equipment for the inspector to use in conducting or supervising tests. For the final lot inspection, the manufacturer must provide a suitable working environment and a smooth-top table for the inspector's use.

§ 160.076–31 Production tests and examinations.

(a) Samples used in testing must be selected in accordance with § 160.076–29(e).

(b) On each sample selected—

(1) The manufacturer must conduct the tests in paragraphs (c)(2) through (c)(8) of this section;

(2) The recognized laboratory inspector must conduct or supervise the tests in paragraphs (c)(4) through (c)(8) of this section; and

(3) In addition to meeting the requirements of this section, each test result must meet the requirements, if any, contained in the approved plans and specifications.

(c) When conducting the tests specified by this paragraph, the following conditions must be met:

(1) *Inflation chamber materials.* The average and individual results of testing the minimum number of samples prescribed by § 160.076–25(d)(2) must comply with the requirements in § 160.076–21 (b) and (c) for permeability, grab strength, and tear strength. Lots not meeting this requirement must be rejected and, unless authorized by the Commandant, may not be subdivided and retested.

(2) *Seam strength.* The seams in each inflation chamber of each sample must be tested in accordance with § 160.076–25(d)(2)(iv). The results for each inflation chamber must be at least 90% of the results obtained in approval testing.

(3) *Over-pressure.* Each sample must be tested in accordance with and meet UL 1180 section 7.15. Prior to initiating the test at the specified values, samples may be prestressed by inflating them to a greater pressure than the required test pressure.

(4) *Air retention.* Each sample must be tested in accordance with and meet UL 1180 section 7.16. Prior to initiating the

test at the specified values, test samples may be prestressed by inflating to a pressure greater than the design pressure, but not exceeding 50 percent of the required pressure for the tests in paragraph (c)(3) of this section. No alternate test method may be used that decreases the length of the test unless authorized by the Commandant. Such alternative test must require a proportionately lower allowable pressure loss and the same percentage sensitivity and accuracy as the standard allowable loss measured with the standard instrumentation.

(5) *Buoyancy and inflation medium retention.* Each sample must be tested in accordance with and meet UL 1180 section 7.2.2–7.2.10, except 7.2.5. Each buoyancy value must fall within the tolerances specified in the approved plans and specifications.

(6) *Tensile strength.* Each sample primary closure system must be tested in accordance with and meet UL 1180 section 7.4.1 and .2.

(7) *Detailed product examination.* Each sample PFD must be disassembled to the extent necessary to determine compliance with the following:

(i) All dimensions and seam allowances must be within tolerances prescribed in the approved plans and specifications.

(ii) The torque of each screw type mechanical fastener must be within its tolerance as prescribed in the approved plans and specifications.

(iii) The arrangement, markings, and workmanship must be as specified in the approved plans and specifications and this subpart.

(iv) The PFD must not contain any apparent defects.

(8) *Waterproof marking test.* Each sample must be completely submerged in 45–C (110–F) water with mild detergent for a minimum of 30 minutes, and then removed and immediately placed on a hard surface. The markings must be vigorously rubbed with the fingers for 15 seconds, and then placed on a soft surface and rubbed again in the same manner. If the printing becomes illegible, the sample must be rejected.

(d) *Final lot examination and inspection*—(1) *General.* On each PFD lot that passes production testing, the manufacturer shall perform a final lot examination and, on every fifth lot, a laboratory inspector shall perform a final lot inspection. Samples must be selected in accordance with paragraph § 160.076–29(e). Each final lot must demonstrate—

(i) First quality workmanship;

(ii) That the general arrangement and attachment of all components, such as body straps, closures, inflation mechanisms, tie tapes, and drawstrings, are as specified in the approved plans and specifications;

(iii) Compliance with the marking requirements in § 160.076–39; and

(iv) That the information pamphlet and owner's manual required by § 160.076–35 and 160.076–37, respectively, are securely attached to the device, with the pamphlet selection information visible and accessible prior to purchase.

(2) *Accept/reject criteria.* Each nonconforming PFD must be rejected. If three or more nonconforming PFDs are rejected for the same kind of defect, lot examination or inspection must be discontinued and the lot rejected.

(3) *Manufacturer examination.* This examination must be conducted by a manufacturer's representative who is familiar with the approved plans and specifications, the functioning of the PFD and its components, and the production testing procedures. This person must not be responsible for meeting production schedules or be supervised by someone who is. This person must prepare and sign the record required by 159.007–13(a) of this chapter and 160.076–33(b).

(4) *Independent laboratory inspection.* (i) The inspector must discontinue lot inspection and reject the lot if examination of individual PFDs or the records for the lot shows noncompliance with either this section or the laboratory's or the manufacturer's quality control procedures.

(ii) If the inspector rejects a lot, the inspector must advise the Commandant or the recognized laboratory within 15 days.

(iii) The inspector must prepare and sign the inspection record required by 159.007–13(a) of this chapter and 160.076–33(b). If the lot passes, the record must include the inspector's certification that the lot passed inspection and that no evidence of noncompliance with this section was observed.

(e) *Disposition of rejected PFD lot or PFD.* (1) A rejected PFD lot may be resubmitted for testing, examination or inspection if the manufacturer first removes and destroys each defective PFD or, if authorized by the Commandant, reworks the lot to correct the defect.

(2) Any PFD rejected in a final lot examination or inspection may be resubmitted for examination or inspection if all defects have been corrected and reexamination or reinspection is authorized by the Commandant.

(3) A rejected lot or rejected PFD may not be sold or offered for sale under the representation that it meets this subpart or that it is Coast Guard-approved.

§ 160.076–33 Manufacturer records.

(a) Each manufacturer of inflatable PFDs shall keep the records of production inspections and tests as required by § 159.007–13 of this chapter, except that they must be retained for at least 120 months after the month in which the inspection or test was conducted.

(b) In addition to the information required by § 159.007–13 of this chapter, the manufacturer's records must also include the following information:

(1) For each test, the serial number of the test instrument used if more than one test instrument was available.

(2) For each test and inspection, the identification of the samples used, the lot number, the approval number, and the number of PFDs in the lot.

(3) For each lot rejected, the cause for rejection, any corrective action taken, and the final disposition of the lot.

(4) For all materials used in production the—

(i) Name and address of the supplier;

(ii) Date of purchase and receipt;

(iii) Lot number; and

(iv) Where required by § 164.019–5 of this chapter, the certification received with standard components.

(5) A copy of this subpart.

(6) Each document incorporated by reference in § 160.076–11.

(7) A copy of the approved plans and specifications.

(8) The approval certificate obtained in accordance with § 2.75–1 and 2.75–5 of this chapter.

(9) Certificates evidencing calibration of test equipment, including the identity of the agency performing the calibration, date of calibration, and results.

(c) A description or photographs of procedures and equipment used in testing required by § 159.007–13(a)(4) of this chapter, is not required if the manufacturer's procedures and equipment meet the requirements of this subpart.

(d) The records required by paragraph (b)(4) of this section must be kept for at least 120 months after preparation. All other records required by paragraph (b) of this section must be kept for at least 60 months after the PFD approval expires or is terminated.

§ 160.076–35 Information pamphlet.

A pamphlet that is consistent in format to that specified in UL 1123 must be attached to each inflatable PFD sold or offered for sale in such a way that a prospective purchaser can read the pamphlet prior to purchase. The

pamphlet text and layout must be submitted to the Commandant for approval. The text must be printed in each pamphlet exactly as approved by the Commandant. Additional information, instructions, or illustrations must not be included within the approved text and layout. Sample pamphlet text and layout may be obtained by contacting the Commandant. This pamphlet may be combined with the manual required by § 160.076–37 if PFD selection and warning information is provided on the PFD packaging in such a way that it remains visible until purchase.

§ 160.076–37 Owner's manual.

(a) *General.* The manufacturer must provide an owner's manual with each inflatable PFD sold or offered for sale. A draft of the manual for each model must be submitted for approval in accordance with § 160.076–13.

(b) *Manual contents.* Each owner's manual must contain the information specified in UL 1180 section 11 and—

(1) In addition to the information specified in UL 1180 section 11.2, instructions that a user may need to partially deflate the PFD to climb out of the water unaided;

(2) The manufacturer's expected service life of the device under normal use with a description of normal and abnormal use as well as conditions that are particularly deleterious;

(3) Warnings about possible misuse which could be hazardous, such as a warning against wearing a PFD that has automatic inflation under restrictive clothing. Warnings must be presented in a format consistent with ASTM F 1166, section 29;

(4) If the PFD is approved under the LSI provisions of § 160.076–27, an estimate of the user's chances of survival if the user complies with the conditions and assumptions upon which approval of the PFD was based, and an estimate of the chances of survival if the user does not comply; and

(5) If the PFD is conditionally approved, an explanation of the meaning of, and reasons for, the approval conditions.

§ 160.076–39 Marking.

(a) *General.* Each inflatable PFD must be marked as specified in UL 1180 section 10 and this section.

(b) PFD Type. Based on its approval certificate, each PFD must be marked as follows—

(l) ''Type I PFD'';

(2) ''Type II PFD'';

(3) ''Type III PFD''; or

(4) ''Type V [*insert exact text of description noted on the approval certificate, if any*] PFD—[*insert text required by paragraph (c) of this section*]. This PFD provides in-water performance equivalent to a Type [*insert performance type criteria noted on the approval certificate*] PFD.''

(c) Unless otherwise specified on its approval certificate, a Type V, conditionally approved inflatable PFD must be marked ''approved only when worn''.

(d) *Additional markings.* (1) Unless otherwise noted on the approval certificate, each inflatable PFD must be marked with the following:

(i) ''NOT APPROVED FOR USE ON COMMERCIAL VESSELS.''

(ii) The unique model, style, or part number of the inflation mechanism approved for use on the PFD.

(2) Additionally, where appropriate, each inflatable PFD must be marked with a permanent and prominent warning against any foreseeable misuse of the PFD that will result in a particularly hazardous condition, such as wearing an automatically activated belt-pack style PFD on the back.

(e) *Inflation mechanisms.* Each manual, automatic, or manual-auto inflation mechanism must be permanently marked with its unique model number.

(f) Unless marked with a universal symbol accepted by the Commandant, the inflation handle of a manual inflation mechanism must be marked ''Jerk to inflate''. The marking must be waterproof, permanent, and quickly readable from a distance of 1.5 m (5 feet).

Dated: June 1, 1995.

J.C. Card,

Rear Admiral U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

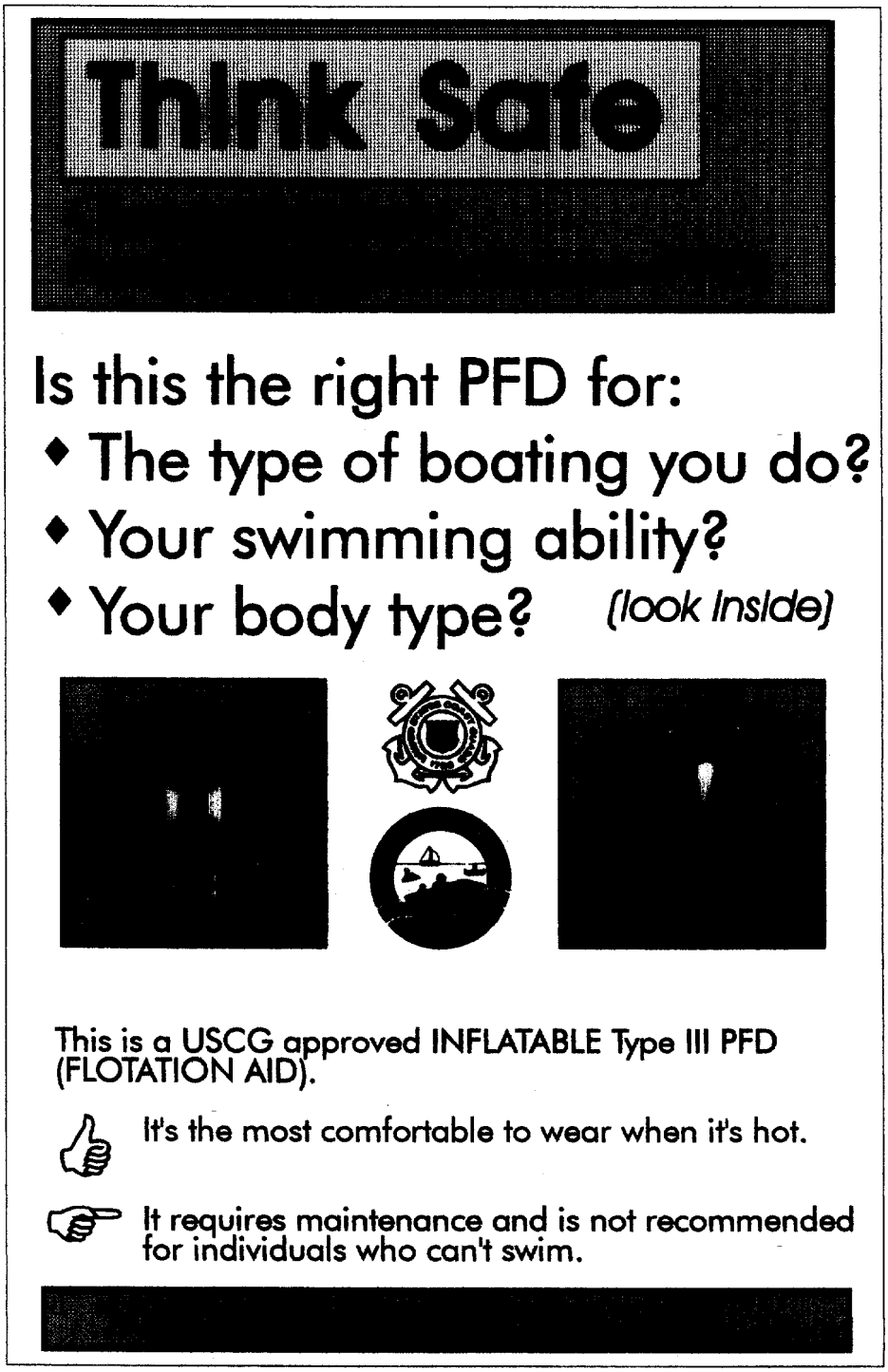
BILLING CODE 4910–14–P

Appendix I -- Example inflatable PFD pamphlet

Note -- The following appendix will not appear in the Code of Federal Regulations.

Summary: The information contained in this appendix is for informational purposes only. The PFD pamphlet page layouts that follow are examples of the type of information that would be acceptable for meeting the requirements of § 160.076–35 for an inflatable, yoke style, manually activated Type III PFD. Section § 160.076–35 requires that the information be provided in a format and colors consistent with the requirements of UL 1123.

The following is an example of the front cover:



The following is an example of the inside front cover:

A Type III Inflatable PFD (Flotation Aid) is:

NOT FOR use by NON-SWIMMERS OR WEAK SWIMMERS, unless worn INFLATED.

NOT FOR USE BY CHILDREN younger than 16 years of age OR BY PERSONS WEIGHING LESS THAN 80 POUNDS.

WARNING

THIS PFD WILL NOT FLOAT WITHOUT INFLATION.

YOU MUST REARM THIS PFD AFTER EACH USE.

YOU MUST CHECK THE STATUS OF THE INFLATOR BEFORE EACH OUTING.

In order for this PFD to function properly, you must inflate it when flotation is needed.

See Owner's Manual for status check and rearming instructions.

Inflatable PFDs require more frequent checks than those which are inherently buoyant.

The following is an example of page 1:

Advantages:

Comfortable for continuous wear.

Least bulky of all designs.

Good flotation when inflated.

Most comfortable for use in hot weather.

After inflation, this PFD will support most wearers in a face-up position in the water.

Available in one universal adult size.

Disadvantages:

Needs proper rearming and maintenance in order to provide flotation.

Some users may need assistance to properly rearm inflator.

Will not provide flotation without inflation.

Intended Uses:

General boating activities by adults.

Inland waters, or where there is a good chance of a fast rescue.

Continuous wear so it's available in an emergency.

Do not wear an inflatable PFD under restrictive clothing, because automatic or accidental manual inflation could restrict breathing or injure you.

Insert pages similar to pages 1–8, and 13 of UL 1123 Appendix B and renumber accordingly.

The following is an example of the inside back cover:

PFDS -- IT'S YOUR CHOICE!

Requirements

All boats:

Must be equipped with one wearable Type I, II, III or V PFD for each person on board.

Boats greater than 16 feet in length:

In addition to above, must be equipped with one Type IV PFD.

Inflatable PFD

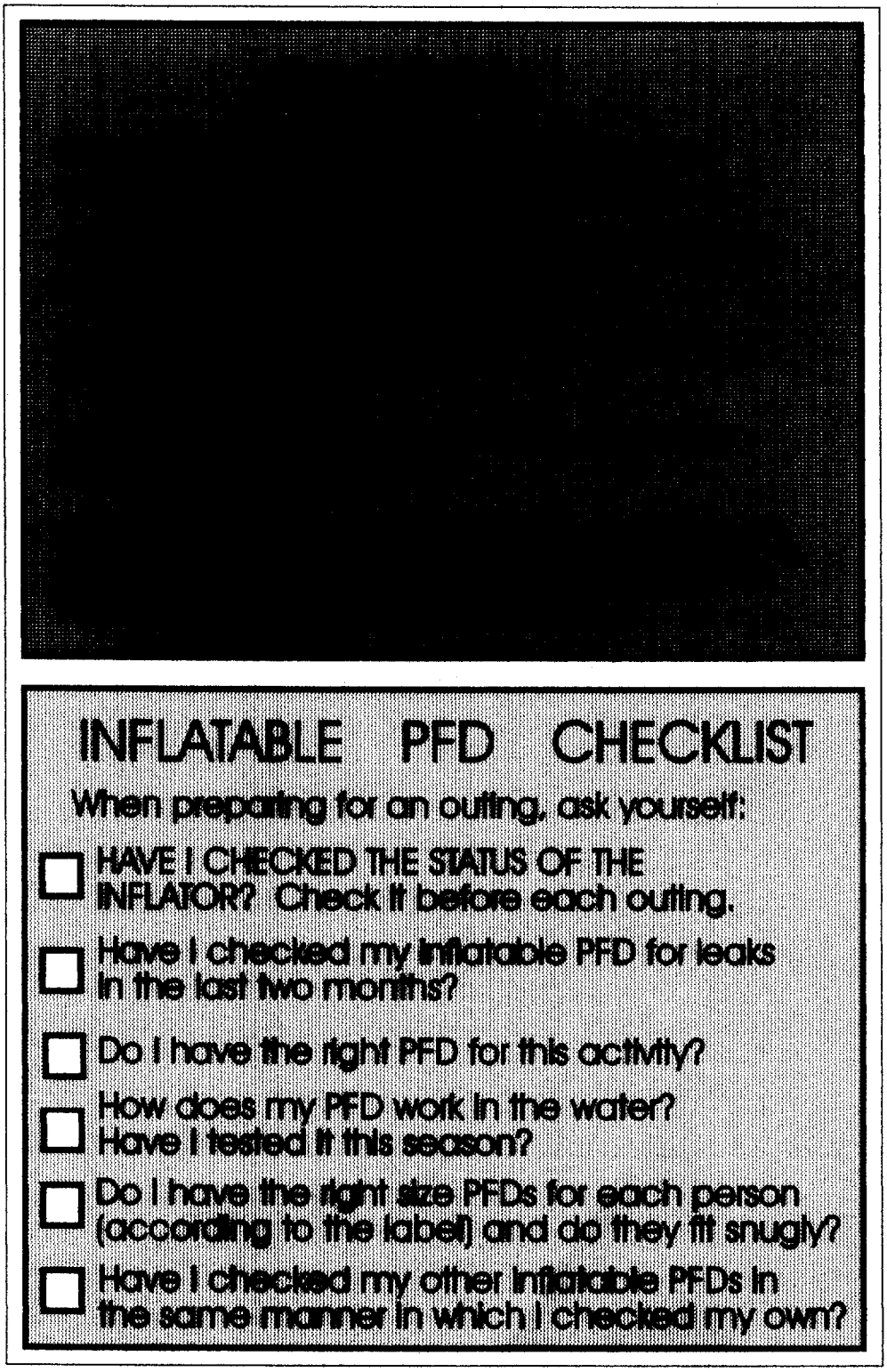
High performance in compact space, but requires regular user checks and maintenance.

Inherently Buoyant PFD

Rugged, low maintenance, but sometimes less comfortable to wear.

PFD Type	Application	Advantages
Type I Inflatable & Inherently Buoyant Types	Offshore, Open water, Coastal Cruising, General Boating	Best for all water; 22 lbs. or more buoyancy; will float wearer in face up position.
Type II Inflatable & Inherently Buoyant Types	Inland waters or calm waters where there is a good chance of a fast rescue.	Good comfort; low cost; 15.5 lbs. or more buoyancy.
Type III Inflatable & Inherently Buoyant Types	Calm inland waters where there is a good chance of a fast rescue.	Most comfort; stylish; allows wearer to swim; many sizes and colors; 16.5 lbs. or more buoyancy.
Type IV Inherently Buoyant Only	Calm inland waters where help is always nearby.	Throwable; good backup to wearable PFDs; 16.5 lbs. or more buoyancy
Type V Inflatable & Inherently Buoyant Types	Special use. See its performance type marked on the label.	See pamphlet.

The following is an example of the back cover:



[FR Doc. 95–15077 Filed 6–22–95; 8:45 am]
BILLING CODE 4910–14–C

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 175, 179, and 181

46 CFR Parts 2, 159, and 160

[CGD 93–055]

RIN 2115–AE58

Approval of Inflatable Personal Flotation Devices (PFDs) for Recreational Boaters

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish approval procedures for recreational inflatable personal flotation devices (PFDs), revise the approval procedures for other kinds of recreational PFDs and make editorial changes. These procedures are intended to establish an efficient approval procedure for PFDs. The Coast Guard anticipates that recreational boaters will be more likely to wear inflatable PFDs than currently approved devices, thereby increasing use of PFDs by the boating public and saving lives.

DATES: Comments must be received on or before October 23, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 93–055), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on collection-of-information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

A copy of the material listed in ''Incorporation by Reference'' of this preamble is available for inspection at room 1404, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Markle, U.S. Coast Guard, Survival Systems Branch (G–MVI–3), telephone (202) 267–1444, facsimile (202) 267–1069, or electronic mail ''mvi–3/G-M@cgsmtp.comdt.uscg.mil''. A copy of this proposed rule may be obtained by calling the Coast Guard's toll-free Customer Infoline, 1–800–368–5647. In Washington, DC, call 267–0780.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 93–055) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under ''**ADDRESSES**.'' The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Mr. Robert Markle, Project Manager, U.S. Coast Guard, Survival Systems Branch (G–MVI–3), and Ms. Helen Boutrous, Project Counsel, Office of Chief Counsel.

Regulatory History

On November 9, 1993, the Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) entitled ''Inflatable Personal Flotation Devices'' in the **Federal Register** (58 FR 59428). The Coast Guard received nine letters commenting on the ANPRM. One of the comments requested a public hearing, however, after consideration, the Coast Guard determined that no new issues would have been raised which would have materially assisted the Coast Guard in developing this rule. Therefore, no public hearing was held.

Background and Purpose

The November 9, 1993, ANPRM discussed the Coast Guard's intention to adopt structural and performance standards for inflatable personal flotation devices (PFD) used on recreational boats, as well as the procedures for approval and carriage requirements. The ANPRM discussed the Coast Guard's intention to participate in the development of an Underwriters Laboratories (UL) standard for inflatable PFDs, which would be the basis for Coast Guard approval of these devices. The UL standard (UL 1180) is complete, with one section reserved. An interim final rule (IFR) which establishes Coast Guard approval standards for inflatable PFDs for recreational boats based on UL 1180, is published elsewhere in today's edition of the **Federal Register**. The reserved section of UL 1180 will contain text for information pamphlets to accompany inflatable PFDs. UL expects to complete this section within a year. The Coast Guard anticipates that it will incorporate those provisions by reference once they are completed. Proposed pamphlet requirements are discussed later in this preamble under ''*Information pamphlet*.'' UL 1180 was developed in accordance with the American National Standards Institute (ANSI) procedure for voluntary industry standards, providing opportunity for participation by interested parties. Publication of the IFR will permit manufacturers to proceed with the manufacture and approval of these devices. Limited procedures to allow for approval of inflatable devices are included in the IFR.

This notice proposes various other rule changes related to the approval of inflatable PFDs for recreational boats which would establish an approval procedure that would allow for the use of independent laboratories in the approval process. These proposed rules were not published as part of the IFR because they may affect the approval of other PFDs to a limited extent and the public has not yet had a chance to fully participate in their development.

Discussion of Comments

The issues raised by the comments received in response to the ANPRM that pertained to the standards for inflatable PFDs were discussed in the IFR (CGD 94–110) published elsewhere in today's edition of the **Federal Register**. The issues raised by the comments that pertained to the approval procedures for PFDs and other issues addressed in this NPRM are discussed below.

Serviceable Condition

The ANPRM asked if ''serviceable'' should be defined as an inflatable PFD with a properly armed inflation

mechanism to encourage the development of inflation mechanisms which are easy to use and easy to maintain.

One comment from a boat owners association simply supported adding a definition of ''serviceable'' to the regulations. Another comment also stated that a definition of ''serviceable'' would be helpful and further stated that the desirability of professional maintenance by the manufacturer or an authorized facility should be considered, perhaps after an extended period of service such as five years. Another comment stated that the user manual and product markings should clearly direct the user to pay proper attention to the inflatable PFD's state of readiness.

The Coast Guard agrees that an explanation of the term ''serviceable'' is needed, and proposes to add § 175.23 that would set a standard for ''serviceable condition'' that would apply to all PFDs, and would include additional specific requirements for inflatable PFDs and hybrid inflatable PFDs. The term is presently used in 33 CFR 175.21(a), but is not defined anywhere in part 175. The requirements involving serviceability for all PFDs and the more specific requirements for inherently buoyant PFDs are based on guidance currently used by Coast Guard commercial vessel inspectors, and by Coast Guard Auxiliary examiners. The standard for ''serviceable'' for inflatable PFDs is newly developed by the Coast Guard for inclusion in this NPRM.

The ANPRM also questioned whether the Coast Guard should require professional servicing for inflatable PFDs atapproved servicing facilities. Three inflatable PFD manufacturers supported professional servicing; however, they do not believe professional servicing should be mandatory, or that the government should set up inspection facilities at taxpayer expense. Instead, the comments suggested that professional servicing should be recommended or offered by the manufacturers or through licensed agents or both. One of these comments stated that the required owner's manual should provide instructions for owner inspection and identify where the owner can obtain help if needed. Another of these comments stated that the Coast Guard should recommend annual user inspection for air leaks, etc., and that the manufacturer should offer servicing every two years at an affordable fee. The comment also stated that after 10 years the chamber should no longer be serviced and replacement should be recommended. Another comment stated that professional servicing would be unnecessary if quality is held to a high standard, and that requiring professional servicing would greatly increase the cost of owning an inflatable PFD.

The Coast Guard is not proposing to require professional servicing at this time. It agrees that the PFD owner's manual should address both user servicing and advice on how to obtain professional servicing. The Coast Guard strongly encourages manufacturers to offer professional servicing. The Coast Guard also encourages, but does not propose to require, manufacturers to keep records on the condition of the devices received for servicing in order to aid in the successful introduction of inflatable PFDs.

Another comment suggested that an inflatable PFD which is worn inflated should be considered ''serviceable'' even if the CO2 system is unarmed. The Coast Guard agrees and has included this condition in proposed § 175.23(d). Wearing the PFD inflated is a prudent action to take if the materials are not available to rearm a PFD and is a reasonable way to ensure the safety of the user of an unarmed inflatable PFD.

A number of other issues related to serviceability were raised in response to the ANPRM. These other issues concerned the design of the PFD and its inflation mechanism, and were considered in the development of UL 1180 and UL 1191. These issues are further addressed in the preamble to the IFR discussed above.

Defect Notification

The ANPRM suggested making inflatable PFDs ''associated equipment'' and subject to the defect notification provisions of 33 CFR Part 179, in accordance with 46 U.S.C. 4310. It was suggested that this action would provide better accountability and a positive means to identify reliability problems which may arise as a result of approval of a potentially less reliable device. Five comments favored making inflatable PFDs ''associated equipment'' for the purpose of defect notification.

The Coast Guard's position is that designating inflatable PFDs as associated equipment would provide animportant means to help ensure the safety of inflatable PFDs used by the public. Therefore, this NPRM proposes designation of inflatable PFDs as associated equipment in 33 CFR part 179 in accordance with 46 U.S.C. 4310. This would require manufacturers to notify first purchasers of inflatable PFDs of any defects which may be discovered after the PFDs have been produced and sold.

Registration Card

The five comments that supported making inflatable PFDs ''associated equipment'' for the purpose of defect notification did not favor making retailers responsible for preparing first purchaser lists. Instead, the comments suggested a consumer registration card, and a requirement that the consumer be provided with information that makes it clear that it is in the consumer's interest to complete the card and return it to manufacturer.

The Coast Guard finds that this suggestion has merit. This NPRM proposes to add a new subpart H to 33 CFR part 181, requiring manufacturers to provide a postage prepaid registration card with each inflatable PFD. This appears to be the most reasonable way for manufacturers to obtain the names and addresses of first purchasers. Since most inflatable PFDs will be sold at retail or by mail order, it appears to be unreasonable to place the burden of preparing purchaser lists on the seller. Prepayment of the postage will encourage purchasers to complete and return the cards. The cards should ease the manufacturers' recordkeeping burden, since the cards merely need to be collected and stored for five years. They would need to be used only in the unusual circumstance where first purchasers have to be notified of a defect. The registration cards would be required to be securely attached to the PFD in the same manner as the information pamphlet, and could even be printed as a separable part of the pamphlet. Retention of registration cards would constitute compliance with the requirement to exercise due diligence in establishing and maintaining a list of purchasers, as required under 46 U.S.C. 4310(c)(1)(A).

Another comment stated that purchaser lists should be an interim requirement, based on voluntary return of a registration card, and that the value of continued use of a registration system should be reviewed periodically to determine whether it should be continued. The Coast Guard agrees. All Coast Guard regulations are reviewed on a periodic basis. This regulation, like all regulations affecting recreational boats will be reviewed periodically at public meetings of the National Boating Safety Advisory Council (NBSAC). NBSAC meeting announcements are published in the **Federal Register**, along with an agenda for the meeting.

Another comment stated that inflatable PFDs should be manufactured in batches and given sequential serial numbers to permit traceability and enable owners not on purchaser lists to

determine if their PFDs are involved in a recall.The Coast Guard agrees with the suggestion regarding numbering PFDs in batches with sequential serial numbers and such a requirement is included in the regulations published in the IFR.

Editorial Revisions

A number of editorial changes to part 179 are also proposed. Most of these changes relate to elimination of references to the Federal Boat Safety Act of 1971, and replacing them with references to Title 46 of the United States Code (U.S.C.), which was recodified in 1983 and includes previously enacted provisions of the Federal Boat Safety Act of 1971.

Information Pamphlet

This NPRM proposes to revise 33 CFR part 181, subpart G to require that an appropriate information pamphlet be provided with inflatable PFDs, as they are for other kinds of PFDs. The proposed requirement for the pamphlet in § 181.705 refers to the information pamphlet requirements established by the IFR (CGD 94–110) published elsewhere in today's edition of the **Federal Register**. However, if the pamphlet requirements of UL 1180 are completed before publication of a final rule, that part of the UL standard would be incorporated by reference at that time.

A number of related editorial revisions to 33 CFR subpart G are also proposed in this NPRM.

Approval of Inflatable Personal Flotation Devices and Other Equipment

The following paragraphs describe minor proposed revisions which are related to the approval of inflatable personal flotation devices, but which are relevant to the approval of other items of equipment as well.

This NPRM proposes to revise §§ 2.75–1(f) and 159.005–13(a)(4) of Title 46 to eliminate the requirement that the Coast Guard publish approval actions in the Federal Register. No such listing has been published in recent years, and the Coast Guard has received no complaints. The Coast Guard's estimation is that the listing was rarely, if ever, used. It is the Coast Guard's position that its publication ''Equipment Lists,'' published approximately every two years, is readily available through the Government Printing Office. More current information can be obtained directly from the Coast Guard from its computerized data base upon request. Accordingly, the revised §§ 2.75–1(f) and 159.005–13(a)(4) would identify the ''Equipment Lists'' publication and state that it is available from the Government Printing Office.

The Coast Guard proposes to remove §§ 2.75–17, 2.75–18, and 2.75–19. These sections deal with documents referenced in Coast Guard regulations, and have been made obsolete by the Office of the Federal Register's current policy on documents incorporated by reference. The Coast Guard also proposes to remove § 2.75–20 because the affidavit and certification program described in that section is no longer in use.

This NPRM also proposes to remove § 2.75–30. This section would be replaced by new and revised sections of 46 CFR parts 159 and 160 to more accurately describe the approval procedures for PFDs used on recreational boats. Section 2.75–30 was first published in 1964 when the Coast Guard started using independent laboratories to perform certain approval functions related to ''Special purpose water safety buoyant devices.'' Much of this section is now obsolete, including its title. The proposed revisions to parts 159 and 160 are discussed in more detail, below.

Proposed revisions to § 2.75–50 would update the appeal process regarding denials, withdrawals and terminations of approval. The Merchant Marine Council referred to in the present section no longer exists. The proposed procedure would provide for appeal to the Chief of the Office of Marine Safety, Security, and Environmental Protection in accordance with the appeal procedures of 46 CFR subpart 1.03. Proposed revisions to § 159.001–2 would refer to revised § 2.75–50 as the appropriate appeal procedure.

The definitions in § 159.001–3 are proposed to be revised by deleting ''Listed laboratory'' and ''Test plan''. Definitions for ''classification society'', ''independent laboratory'', and ''recognized independent laboratory'' would be added. Except for ''classification society'', these proposed changes are necessary to conform to other revisions to part 159 discussed below.

A new § 159.001–4 would list documents incorporated by reference into part 159.

Inspection Functions

Classification societies perform many inspection functions related to commercial shipping in the United States and around the world. The maritime safety administrations of other governments, like the U.S. Coast Guard, also perform some of these inspection functions. Some of these classification societies and government agencies operate laboratory facilities, but others perform all of their inspections and tests at shipyards and other manufacturing sites. Classification societies meeting the standards set out in Resolution A.739(18) of the International Maritime Organization (IMO), and agencies of other governments involved in the inspection and testing of marine safety equipment, are capable of performing all of the functions of an independent laboratory for many items of approved equipment. Therefore, the Coast Guard proposes to clarify the definition of ''independent laboratory'' to include such classification societies and government agencies. The proposed definition is broad enough to include other agencies of the U.S. government, so that U.S. Navy and Department of Defense personnel, for example, could perform certain inspections of Coast Guard approved equipment being purchased by those agencies. Under proposed revisions § 159.010–5, independent laboratories would be required to submit specified information to the Coast Guard in order to be accepted. Commercial laboratories would be required to submit additional information which would be irrelevant for classification societies and government agencies.

Proposed § 159.001–5 would include a facsimile number and an electronic mail address for the Commandant (G-MVI) to provide optional methods of communication with the Coast Guard.

Subpart 159.010 would be revised to eliminate all references to ''listing'' of, and ''listed'' laboratories. When Subpart 159.010 was published, it was envisioned that such laboratories would prepare a detailed test plan for Coast Guard review and approval, and that such laboratories would be ''listed'' in the various subparts under which they had been accepted. This listing of laboratories never occurred, and the Coast Guard now considers the concept to be obsolete. These revisions affect the title of subpart 159.010, as well as §§ 159.010–1(a)(2) and –1(a)(3), 159.010–7 (to be removed), 159.010–9, 159.010–11 (to be removed), 159.010–17, 159.010–19, and 159.010–21. In addition, sections of various subparts which were to contain these laboratory listings are proposed to be removed. These are §§ 160.021–9, 160.022–9, 160.023–9, 160.024–9, 160.028–9, 160.031–9, 160.036–9, 160.037–9, 160.040–9, 160.057–9, and 160.066–18. A related revision is proposed for § 160.066–11(c).

All laboratories that qualify to perform testing and inspection for the Coast Guard under subpart 159.010 are

considered accepted ''independent laboratories''. For some classes of equipment, such as PFDs for recreational boats, the Coast Guard uses laboratories not only to test and inspect equipment, but also to perform other functions related to approval, such as standards development and design review. The Coast Guard refers to these laboratories as ''recognized independent laboratories''. Recognized independent laboratories must enter into a memorandum of understanding (MOU) with the Coast Guard as discussed later in this preamble.

Subpart 159.010 would be revised to incorporate requirements for ''recognized'' laboratories, which are currently addressed in 46 CFR 2.75–30. The Coast Guard intends to eventually have all of the requirements for independent laboratories in one place, and to limit the types of acceptances to just two, instead of the present three (accepted, listed, and recognized). Under the proposed revisions, laboratories would be ''accepted'' for testing equipment under 46 CFR subchapter Q. For certain items of equipment, particularly items with high production volumes, the Coast Guard would use accepted laboratories that are also ''recognized'' to perform certain approval functions on behalf of the Coast Guard. These functions would be specified in a Memorandum of Understanding (MOU) between each laboratory and the Coast Guard.

The Coast Guard and UL have signed the first such MOU, which covers testing and approval of PFDs. The Coast Guard wishes to implement this MOU for the approval of inflatable PFDs for recreational boats, as well as for the approval of other PFDs for which UL is already recognized. The MOU has been placed in the docket for this project and is available for inspection and copying. The UL MOU also can be obtained by writing to Commandant (G–MVI), U.S. Coast Guard, 2100 Second Street, S.W. Washington, DC, 20593–0001, or by sending a request via electronic mail to ''s.wehr/g-m18@cgsmtp.comdt.uscg.mil''.

Note that the NPRM does not propose to remove or revise 46 CFR 2.75–25 covering recognized laboratories for portable fire extinguishers. UL, Factory Mutual, and Underwriters Laboratories of Canada are all recognized for testing and approval of various types of portable fire extinguishers at present.

The proposed revisions to subpart 159.010 regarding recognized laboratories are described in the following paragraphs:

(a) Section 159.010–1 would be revised to indicate that recognized laboratories are covered in Subpart 159.010.

(b) Section 159.010–9 would be completely revised to contain a description of the required contents of an MOU, the requirements for laboratories that desire to enter into MOUs with the Coast Guard in order to become recognized laboratories, and information on how to obtain copies of existing MOUs and related information. This section proposes to require, as part of the MOU, comparison testing with other recognized laboratories for those items of equipment, such as PFDs, where subjective testing is involved. Because PFDs require testing with human subjects, the way the tests are run can significantly affect the results. Therefore, the Coast Guard is considering ways to make sure that recognized laboratories achieve comparable results. As drafted, the rule would simply require each laboratory to conduct comparison testing as directed by the Coast Guard, no more often than once every six months. Comments are requested on any or all of the following alternatives for assuring comparability of determinations and test results:

(1) Laboratories could be required to retain test PFDs for at least six months after testing is completed. The Coast Guard could call for these devices at any time before they are discarded, and provide them to another recognized laboratory or laboratory seeking recognition for testing. The second laboratory's results should be comparable to those of the first laboratory. If they are not, the Coast Guard would conduct an analysis to determine why the results are different and how to resolve the differences.

(2) The Coast Guard is considering including a provision in the MOU in which the recognized laboratory would agree to participate in an annual workshop. At such a workshop, laboratories could share information regarding methods used during approval testing. The Coast Guard expects that laboratories would take turns hosting workshops, and that test personnel from all recognized laboratories would attend. Problems identified by the Coast Guard, manufacturers, and the laboratories could be addressed at these workshops, and the various methods of conducting tests could be compared. Results could be compared using different types of test equipment and techniques.

(3) The Coast Guard also seeks to ensure that all recognized laboratories performing approval procedures consider not only the needs of manufacturers, but the needs of PFD users and potential accident victims as well. The Coast Guard seeks to ensure that laboratories appropriately consider the needs of PFD users while providing uniform approval testing services. The Coast Guard specifically seeks comments regarding incentives that could be established to encourage laboratories to maintain the proper balance between the needs of boaters and manufacturers.

(c) Sections 159.010–17, 159.010–19, and 159.010–21 would be revised to cover MOUs and recognized laboratories.

(d) Finally, revisions are proposed in several subparts of part 160 covering PFDs, to remove information that would be redundant or obsolete, as a result of the proposed changes to subpart 159.010 on recognized laboratories. The revisions would affect subparts 160.047, 160.048, 160.049, 160.052, 160.060, 160.064, and 160.077.

Commercial Vessels

Although the inflatable PFDs approved under the rules in the IFR are intended for recreational boats, the Coast Guard is considering permitting them to be used on certain small commercial vessels. Uninspected commercial vessels under 12.1 m (40 ft) in length, not carrying passengers, may presently carry the same types of PFDs used on recreational boats. The regulations for these vessels are in 46 CFR subchapter C. In addition, small passenger vessels inspected under 46 CFR subchapter T, may carry recreational boat PFDs as additional equipment for the optional use of passengers, who want to wear PFDs while underway. Under the IFR, inflatable PFDs for recreational boats will be required to be marked ''NOT APPROVED FOR USE ON COMMERCIAL VESSELS.'' If, as a result of comments, the Coast Guard decides to permit the limited use of these devices on commercial vessels, the requirement for the marking will be removed.

Incorporation by Reference

The following material would be incorporated by reference in 33 CFR 181.4: Underwriters Laboratories Standard UL 1123, Marine Buoyant Devices, February 17, 1995; and Underwriters Laboratories Standard UL 1180, Fully Inflatable Recreational Personal Flotation Devices, edition 1, May 15, 1995. The following material would be incorporated by reference in 46 CFR 159.001–2: International Maritime Organization Resolution A.739(18), Guidelines for the Authorization of Organizations Acting on Behalf of the Administration,

November 22, 1993. Copies of the material are available for inspection where indicated under ''ADDRESSES.'' Copies of the material are available from the sources listed in 33 CFR 181.4, and 46 CFR 159.001–2.

Before publishing a final rule, the Coast Guard will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The rules proposed in this notice are generally procedural, to enable boaters to purchase and use inflatable PFDs on their boats, only if they wish to do so. The only proposal that would require affected parties to do something they are not already doing, is the proposal to provide postage prepaid registration cards. Manufacturers are only being required to hold these cards for five years. No analysis or production of lists is required, unless a defect in an inflatable PFD is found. In that case, the registration cards will make it easier and less costly to locate owners, than it would be otherwise. The volume of these cards will not be such that manufacturers should have to add facilities or staff. The cards probably will be printed as part of the PFD information manual that is presently required for all PFDs. Postage would be 20 per card if stamps are used. If the total cost for this requirement, including overhead, is 50 per device, the total cost to the industry would be only $25,000 annually if 50,000 units per year are produced. Comments are invited on this analysis.

Small Entities

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

The rules proposed in this notice are generally procedural, to enable boaters to purchase and use inflatable PFDs on their boats, only if they wish to do so. As discussed above the economic impact of the new requirements are expected to be minimal. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This proposal contains collection-of-information requirements in the following sections: 33 CFR part 181, subpart H. The following particulars apply:

DOT No: 2115.

OMB Control No.: 2115–0141

Administration: U.S. Coast Guard.

Title: Reporting and recordkeeping requirements for fire fighting equipment, structural fire protection materials, lifesaving equipment, and marine sanitation devices.

Need for information: Registration cards are needed to enable manufacturers to notify first purchasers of any defects found in inflatable personal flotation devices.

A Memorandum of Understanding (MOU) is needed to document the responsibilities of the laboratory and the responsibilities of the Coast Guard in relation to equipment testing, inspection, and approval.

Proposed Use of Information: Manufacturers would use the registration card information to contact first purchasers of inflatable PFDs found to have defects.

An MOU formally documents the responsibilities of the laboratory and the responsibilities of the Coast Guard in relation to equipment testing, inspection, and approval.

Frequency of Response: Registration cards would be used only if a manufacturer's PFDs were found to have defects that required notification of first purchasers. No regular reporting is required.

An MOU is required only once, when a laboratory seeks to become a recognized laboratory for a particular classification of equipment.

Burden Estimate: Total annual burden for registration cards is approximately 1700 hours industry-wide.

The Coast Guard estimates that no more than one MOU per year would be developed. Drafting of the MOU should not require more than two weeks of effort for one person, for an annual burden of 80 hours. Copies of existing MOUs may be obtained from the Coast Guard and modified to meet the needs of the individual laboratory and the Coast Guard.

Respondents: Registration card respondents are the estimated five manufacturers that will produce Coast Guard approved inflatable PFDs for recreational boats.

MOU respondents are laboratories that want to be recognized independent laboratories. The Coast Guard estimates no more than one MOU respondent per year.

Form(s): No Federal forms are required.

Average Burden Hours Per Respondent: 340 hours annually for each of the five manufacturers holding registration cards.

If the average recognized laboratory enters into a new or revised MOU once every five years, the average annual burden would be 16 hours.

The Coast Guard has submitted the requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under ADDRESSES.

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rulemaking establishes and revises procedures for Coast Guard approval of inflatable and other PFDs. The authority to establish these requirements are committed to the Coast Guard by Federal statutes. Furthermore, since PFDs are manufactured and used in the national marketplace, safety standards for PFDs should be national in scope to avoid burdensome variances. Therefore, the Coast Guard intends for this rule, if adopted, to preempt State action on the same subject matter.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. The proposal is procedural in nature, and contains nothing that would affect the environment.

List of Subjects

33 CFR Part 175

Marine safety.

33 CFR Part 179

Marine safety, Reporting and recordkeeping requirements.

33 CFR Part 181

Labeling, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 2

Marine safety, Reporting and recordkeeping requirements, vessels.

46 CFR Part 159

Business and industry, Laboratories, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 160

Marine safety, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR parts 175, 179 and 181; and 46 CFR parts 2, 159, and 160 as follows:

Title 33—[Amended]

PART 175—EQUIPMENT REQUIREMENTS

1. The authority citation for part 175 continues to read as follows:

Authority: 46 U.S.C. 4302; 49 CFR 1.46

2. In § 175.21, paragraph (a) is revised to read as follows:

§ 175.21 Condition; size and fit; approval marking.

* * * * *

(a) In serviceable condition as provided in § 175.23;

* * * * *

3. Section 175.23 is added to read as follows:

§ 175.23 Serviceable condition.

A PFD is considered to be in serviceable condition for purposes of § 175.21(a) only if the following conditions are met:

(a) No PFD may exhibit deterioration that could diminish the performance of the PFD, including—

(1) Metal or plastic hardware used to secure the PFD on the wearer that is broken, deformed, or weakened by corrosion;

(2) Webbings or straps used to secure the PFD on the wearer that are ripped, torn, or which have become separated from an attachment point on the PFD; or

(3) Any other rotted or deteriorated structural component that fails when tugged.

(b) In addition to meeting the requirements of paragraph (a) of this section, no inherently buoyant PFD, including the inherently buoyant components of a hybrid inflatable PFD, may exhibit—

(1) Rips, tears, or open seams in fabric or coatings, that are large enough to allow the loss of buoyant material;

(2) Buoyant material that has become hardened, non-resilient, permanently compressed, waterlogged, oil-soaked, or which shows evidence of fungus or mildew; or

(3) Loss of buoyant material or buoyant material that is not securely held in position.

(c) In addition to meeting the requirements of paragraph (a) of this section, an inflatable PFD, including the inflatable components of a hybrid inflatable PFD, must be equipped with—

(1) Except as provided in paragraph (d) of this section, a properly armed inflation mechanism, complete with a full inflation medium cartridge and all status indicators showing that the inflation mechanism is properly armed;

(2) Inflatable chambers that are all capable of holding air;

(3) Oral inflation tubes that are not blocked, detached, or broken;

(4) A manual inflation lanyard or lever that is not inaccessible, broken, or missing; and

(5) Inflator status indicators that are not broken or otherwise non-functional.

(d) The inflation system of an inflatable PFD need not be armed when the PFD is worn inflated and otherwise meets the requirements of paragraphs (a) and (c) of this section.

PART 179—DEFECT NOTIFICATION

4. The authority citation for Part 179 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 4302, 4307, 4310, and 4311; 49 CFR 1.46.

5. Section 179.01 is revised to read as follows:

§ 179.01 Purpose.

This part prescribes rules to implement 46 U.S.C. 4310, governing the notification of defects in boats and associated equipment.

6. Section 179.03 is revised to read as follows:

§ 179.03 Definitions.

Associated equipment means the following equipment as shipped, transferred, or sold from the place of manufacture and includes all attached parts and accessories:

(a) An inboard engine.

(b) An outboard engine.

(c) A stern drive unit.

(d) An inflatable personal flotation device approved under 46 CFR 160.076.

Boat means any vessel—

(a) Manufactured or used primarily for noncommercial use;

(b) Leased, rented, or chartered to another for the latter's noncommercial use; or

(c) Engaged in the carrying of six or fewer passengers.

Manufacturer means any person engaged in—

(a) The manufacture, construction, or assembly of boats or associated equipment;

(b) The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly; or

(c) The importation into the United States for sale of boats, associated equipment, or components thereof.

7. Section 179.05 is revised to read as follows:

§ 179.05 Manufacturer discovered defects.

Each manufacturer who is required to furnish a notice of a defect or failure to comply with a standard under 46 U.S.C. 4310(b), shall furnish that notice within 30 days after the manufacturer discovers the defect or failure to comply.

8. Section 179.07 is revised to read as follows:

§ 179.07 Notice given by "more expeditious means".

Each manufacturer who gives notice by more expeditious means as provided for in 46 U.S.C. 4310(c)(1)(C), must give such notice in writing.

9. In § 179.09 the introductory paragraph is revised to read as follows:

§ 179.09 Contents of notification.

Each notice required under 46 U.S.C. 4310(b) must include the following additional information:

* * * * *

10. Section 179.11 is revised to read as follows:

§ 179.11 Defects determined by the Commandant.

A manufacturer who is informed by the Commandant under 46 U.S.C. 4310(f) that a boat or associated

equipment contains a defect relating to safety or failure to comply with a regulation issued under the authority of 46 U.S.C. 4302, shall within 30 days of receipt of the information—

(a) Furnish the notification described in 46 U.S.C. 4310(d) to the persons designated in 46 U.S.C. 4310(c), or

(b) Provide information to the Commandant by certified mail stating why the manufacturer believes there is no defect relating to safety or failure of compliance.

11. In § 179.13, paragraphs (a) introductory text, (a)(1), and (a)(2) are revised to read as follows:

§ 179.13 Initial report to the Commandant.

(a) When a manufacturer gives a notification required under 46 U.S.C. 4310, the manufacturer shall concurrently send to the Commandant by certified mail—

(1) A true or representative copy of each notice, bulletin, and other communication given to persons required to be notified under 46 U.S.C. 4310(c);

(2) The total number of boats or items of associated equipment potentially affected by the defect or failure to comply with a standard prescribed under 46 U.S.C. 4302; and

(3) * * *

* * * * *

12. Section 179.17 is revised to read as follows:

§ 179.17 Penalties.

Each manufacturer who fails to comply with a provision of 46 U.S.C. 4310 or the regulations in this part, is subject to the penalties as prescribed in 46 U.S.C. 4311.

13. Section 179.19 is revised to read as follows:

§ 179.19 Address of the Commandant.

(a) Each report and communication sent to the Coast Guard and required by this part concerning boats and associated equipment other than inflatable personal flotation devices, must be submitted to Commandant (G–NAB–6),U.S. Coast Guard, 2100 Second St., S.W., Washington, DC 20593–0001.

(b) Each report and communication sent to the Coast Guard and required by this part concerning inflatable personal flotation devices, must be submitted to Commandant (G–MVI–3), U.S. Coast Guard, 2100 Second St., S.W., Washington, DC 20593–0001.

PART 181—MANUFACTURER REQUIREMENTS

14. The authority citation for part 181 is revised to read as follows:

Authority: 46 U.S.C. 4302 and 4310; 49 CFR 1.46.

Subpart A—General

15. In § 181.4, paragraph (b) is revised to read as follows:

§ 181.4 Incorporation by reference.

* * * * *

(b) The materials approved for incorporation by reference in this part, and the sections affected are:

Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062

UL 1123, Marine Buoyant Devices—181.703 February 17, 1995.

UL 1180, Fully Inflatable Recreational Personal—181.705

Flotation Devices, edition 1, May 15, 1995.

16. Section 181.702 is revised to read as follows:

§ 181.702 Information pamphlet: requirement to furnish.

(a) Each manufacturer of a Type I, II, III, IV, or V personal flotation device (PFD) must furnish with each PFD that is sold or offered for sale for use on a recreational boat, an information pamphlet meeting the requirements of § 181.703, § 181.704, or § 181.705 of this subpart, as appropriate.

(b) No person may sell or offer for sale for use on a recreational boat, a Type I, II, III, IV, or V PFD unless an information pamphlet required by this section is attached in such a way that it can be read prior to purchase.

17. Section 181.703 is revised to read as follows:

§ 181.703 Information pamphlet: Contents.

Unless otherwise specified in this subpart, each information pamphlet must contain the information specified in sections 33, 34 and 35 of UL 1123.

18. Section 181.704 is added to read as follows:

§ 181.704 Contents of information pamphlet: Recreational hybrid PFD.

Each information pamphlet for a recreational hybrid PFD approved under 46 CFR 160.077 must contain the information specified in 46 CFR 160.077–27.

19. Section 181.705 is added to read as follows:

§ 181.705 Contents of information pamphlet: Recreational inflatable PFD.

Each information pamphlet for a recreational inflatable PFD approved under 46 CFR 160.077 must contain the information required by 46 CFR 160.076–35.

20. Subpart H is added to read as follows:

Subpart H—Registration Card for Inflatable Personal Flotation Devices

Sec.
181.801 Applicability.
181.805 Registration card.
181.810 Retention of registration cards.

Subpart H—Registration Card for Inflatable Personal Flotation Devices

§ 181.801 Applicability.

This subpart applies to all inflatable personal flotation devices approved under 46 CFR 160.076.

§ 181.805 Registration card.

(a) The manufacturer of each inflatable personal flotation device shall furnish with each such device that is sold or offered for sale, a postage prepaid registration card addressed to the manufacturer.

(b) The registration card required by paragraph (a) of this section must be attached to the inflatable personal flotation device in the same manner as the instruction pamphlet required under § 181.703 of this chapter. Alternatively, the registration card may be printed as part of the pamphlet, arranged to be easily separated, so that the pamphlet remains intact.

(c) Each person who sells or offers for sale a new inflatable personal flotation device, shall ensure that the registration card is attached at the time of purchase unless the seller of an inflatable personal flotation device prepares and mails the registration card for the purchaser.

(d) The following information must be provided on or with the registration card:

(1) A statement that the manufacturer is required by federal law to maintain information on first purchasers of inflatable personal flotation devices intended for use on recreational boats.

(2) A statement urging the purchaser to complete and mail this registration card to enable the manufacturer to notify the purchaser of any important safety information concerning the device.

(3) A statement encouraging the purchaser to notify the manufacturer of any change in the owner's name or address, should such a change occur in the future.

(4) A statement indicating that a purchaser of more than one device of the same model only needs to complete and mail one registration card.

(e) The registration card must include the following:

(1) Spaces for the purchaser's name, address, telephone number, and date of purchase.

(2) A way to indicate the quantity of the particular make and model of device purchased.

(3) Other information needed by the manufacturer to identify the manufacturing lot or serial numbers of the devices purchased.

§ 181.810 Retention of registration cards.

The manufacturer shall retain each completed registration card for a period of at least five years after it is received.

TITLE 46—[AMENDED]

PART 2—VESSEL INSPECTIONS

21. The authority citation for part 2 is revised to read as follows:

Authority: 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12334, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Subpart 2.45 also issued under the authority of Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat. 1120 (see 46 U.S.C. App. note prec. 1).

22. In § 2.75–1, paragraph (f) is revised to read as follows:

§ 2.75–1 Approvals.

* * * * *

(f) A listing of current and formerly approved equipment and materials is published by the Coast Guard from time to time in ''Equipment Lists'' (COMDTINST M16714.3 series), which is available for sale from the Superintendent of Documents, Government Printing Office.

§ 2.75–17 [Removed]

23. Section 2.75–17 is removed.

§ 2.75–18 [Removed]

24. Section 2.75–18 is removed.

§ 2.75–19 [Removed]

25. Section 2.75–19 is removed.

§ 2.75–20 [Removed]

26. Section 2.75–20 is removed.

§ 2.75–30 [Removed]

27. Section 2.75–30 is removed.

28. In § 2.75–50, the section heading and paragraph (a) are revised and a new paragraph (c) is added to read as follows:

§ 2.75–50 Withdrawals or terminations of approvals and appeals.

(a) The Commandant may withdraw approval for any item which is found not to be in compliance with the conditions of approval, found to be unsuitable for its intended purpose, or does not meet the requirements of applicable regulations.

* * * * *

(c) Any person directly affected by a decision to deny, withdraw, or terminate an approval may appeal the decision to the Chief of the Office of Marine Safety, Security, and Environmental Protection (Commandant (G–M)) as provided in § 1.03–15 of this chapter.

PART 159—APPROVAL OF EQUIPMENT AND MATERIALS

29. The authority citation for part 159 is revised to readas follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.45, 1.46; Section 159.001–9 also issued under the authority of 44 U.S.C. 3507.

30. Section 159.001–2 is revised to read as follows:

§ 159.001–2 Right of appeal.

Any person directly affected by a decision or action taken under this subchapter, by or on behalf of the Coast Guard, may appeal to the Chief of the Office of Marine Safety, Security, and Environmental Protection (Commandant (G–M)) as provided in § 1.03–15 of this chapter.

31. Section 159.001–3 is revised to read as follows:

§ 159.001–3 Definitions.

As used in this part:

Classification society means an organization involved in the inspection of ships and ship equipment, and which, as determined by the Commandant, meets the standards in IMO Resolution A.739(18).

Independent laboratory means an organization which meets the standards for acceptance in § 159.010–3 of this part, and which is accepted by the Coast Guard for performing certain tests and inspections. In addition to commercial testing laboratories, the Commandant may also accept classification societies and agencies of governments that are involved in the inspection and testing of marine safety equipment that meet the requirements of § 159.010–3.

Memorandum of Understanding (MOU) is an agreement between the Coast Guard and a laboratory that specifies the approval functions a recognized independent laboratory performs for the Coast Guard and the recognized independent laboratory's working arrangements with the Coast Guard.

Recognized independent laboratory means an independent laboratory which meets the standards of § 159.010–3, and is accepted by the Coast Guard to perform certain equipment approval functions on behalf of the Coast Guard, as described in a Memorandum of Understanding signed by the laboratory and the Coast Guard in accordance with § 159.010–9(b).

32. Section 159.001–4 is added to read as follows:

§ 159.001–4 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register**; and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC, and at the U.S. Coast Guard, Survival Systems Branch (G-MVI–3), 2100 Second Street SW, Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part (subchapter) and the sections affected are as follows:

International Maritime Organization (IMO)

Publications Section, 4 Albert Embankment, London SE1 7SR, England

Resolution A.739(18), Guidelines for the Authorization of Organizations Acting on Behalf of the Administration, November 22, 1993—159.001–3

33. Section 159.001–5 is revised to read as follows:

§ 159.001–5 Correspondence and applications.

Unless otherwise specified, all correspondence and applications in connection with approval and testing of equipment and materials must be addressed to: Commandant (G–MVI), U.S. Coast Guard, 2100 Second St., S.W., Washington, DC 20593–0001, Telephone: (202) 267–1444, Facsimile: (202) 267–1069, Electronic mail: ''MVI–3/G–M18@cgsmtp.comdt.uscg.mil''.

Subpart 159.005—Approval Procedures

34. In § 159.005–13, paragraph (a)(4) is revised to readas follows:

§ 159.005–13 Equipment or material: approval.

(a) * * *

(4) Publishes a record of the approval in ''Equipment Lists.'' The most recent edition of ''Equipment Lists'' U.S. Coast Guard Publication M16714.3 (series) is available from the Superintendent of Documents, U.S. Government Printing

Office, P.O. Box 371954, Pittsburgh, PA 15250–7954.

* * * * *

35. The title of subpart 159.010 is revised to read as follows:

Subpart 159.010—Independent Laboratory: Acceptance, Recognition, and Termination

36. Section 159.010–1 is revised to read as follows:

§ 159.010–1 Purpose.

This subpart contains the following:

(a) The standards and procedures under which the Coast guard accepts an independent laboratory that a manufacturer proposes to use.

(b) The standards and procedures under which a laboratory is accepted as a recognized laboratory under applicable subparts.

(c) The circumstances under which the acceptance or recognition of a laboratory is terminated.

37. Section 159.010–5 is revised to read as follows:

§ 159.010–5 Independent laboratory: application for acceptance.

(a) Each application for acceptance of an organization as an independent laboratory must contain the following:

(1) The name and address of the organization.

(2) A list of the equipment or material that the organization would inspect, or test, or both, under this subchapter.

(3) A description of the organization's experience and its qualifications for conducting the inspections and tests required in the applicable subpart.

(4) A description of the apparatus and facilities available to the organization for conducting those inspections and tests.

(5) If instruments are used in the required tests and inspections, a description of the instrument calibration program applying to those instruments.

(6) The position titles of personnel who are to perform, supervise, or witness those inspections or tests, along with the training and experience required for personnel in those positions.

(7) A statement signed by the chief officer of the organization or the chief officer's representative, that an official representative of the Coast Guard is allowed access to the place where tests and inspections take place, to verify the information submitted in the application, or to witness tests and inspections.

(b) Each application for acceptance as an independent laboratory from an organization that is not submitted by an agency of another government, or a classification society, must also contain the following:

(1) The name and address of each subsidiary and division of the organization or a statement that none are involved in the testing or manufacturing of equipment approved under this subchapter.

(2) The name, title, address, and principal business activity of each of the organization's officers and directors, and the name, address, and principal business activity of each person, company, or corporation that owns at least three-percent interest in the organization or in a company or corporation that controls the organization.

§ 159.010–7 [Removed]

38. Section 159.010–7 is removed.

39. Section 159.010–9 is revised to read as follows:

§ 159.010–9 Recognized independent laboratory: Memorandum of Understanding.

(a) Only laboratories that have entered into an MOU with the Coast Guard may perform the functions of a recognized laboratory under this chapter.

(b) An independent laboratory seeking to become a recognized independent laboratory must submit a signed MOU to the Commandant that includes—

(1) A statement of purpose;

(2) An identification and description of the parties involved;

(3) A description of the problem resolution and appeals processes;

(4) A description of the process for measuring effectiveness and efficiency of the program under the MOU;

(5) The effective date of the MOU and terms for its termination;

(6) A statement to the effect that the MOU is not an exclusive agreement between the recognized independent laboratory and the Coast Guard;

(7) An agreement to conduct comparison testing with other recognized laboratories as directed by the Coast Guard, no more often than twice each year, with the laboratory bearing the cost of sample acquisition and testing;

(8) A statement as to how the costs of implementing the MOU will be borne; and

(9) A description of each party's responsibilities for—

(i) Equipment review and approval;

(ii) Coast Guard oversight of the recognized independent laboratory's procedures and processes;

(iii) Coordination between the parties;

(iv) Developing and maintaining regulations and standards;

(v) Handling review and approval of new and novel items not anticipated by existing regulations and standards;

(vi) Testing and inspection facilities and procedures;

(vii) Production quality control; and

(viii) Maintenance of records.

(c) The signature on the MOU required by paragraph (b) of this section must be that of the chief officer of the independent laboratory or the chief officer's representative. The Commandant or an authorized representative of the Commandant will review the MOU to ensure it contains the information contained in paragraph (b) of this section and is consistent with other MOUs signed by the Commandant. If the Commandant determines that the MOU is acceptable and the independent laboratory is capable of carrying out the functions identified in the MOU, the Commandant or authorized representative will sign the MOU. Where qualitative tests or determinations are required for approval or follow-up, provision must be made for conducting comparison tests with other recognized laboratories.

(d) Copies of MOUs signed by the Commandant in accordance with this part and of lists of independent laboratories which have been accepted as recognized laboratories but which have not yet been added to the lists included in this subchapter may be obtained at the address listed in § 159.001–5.

§ 159.010–11 [Removed]

40. Section 159.010–11 is removed.

41. Section 159.010–17 is revised to read as follows:

§ 159.010–17 Changes in the laboratory's qualifications.

(a) If any of the information submitted under § 159.010–5(a) changes, the laboratory shall notify the Commandant in writing of each change within 30 days after the change has occurred.

(b) If any change in the independent laboratory occurs which affects its performance under the MOU required under § 159.010–9, the laboratory shall notify the Commandant in writing within 30 days after the change occurs. The Commandant may terminate the MOU, or may require amendments or revisions.

42. Section 159.010–19 is revised to read as follows:

§ 159.010–19 Termination of acceptance or recognition of an independent laboratory.

The acceptance or recognition of a laboratory terminates if the laboratory—

(a) Requests termination;

(b) Is no longer in business;

(c) Knowingly fails to perform or supervise an inspection or test, or both, as required in an applicable subpart;

(d) Knowingly attests to the lack of errors, omissions, or false statement of an approval test report that contains errors, omissions, or false statements;

(e) Does not meet the requirements of § 159.010–3(a);

(f) Does not comply with § 159.010–17;

(g) Contracts or transfers the performance or supervision of required inspections or tests to another laboratory or person without the approval of the Commandant; or

(h) Fails to, or in the opinion of the Commandant is unable to, carry out its responsibilities under an MOU required by § 159.010–9.

43. In § 159.010–21, the section heading and paragraph (a) are revised to read as follows:

§ 159.010–21 Termination of acceptance or recognition: Procedure.

(a) If the Coast Guard receives evidence of grounds for termination of acceptance or recognition of an independent laboratory under § 159.010–19, the Commandant will notify the laboratory that termination is under consideration. The notification will specify the reasons for which termination is considered. If a deficiency could materially affect the validity of an approval issued under an applicable subpart, the Commandant may immediately suspend the acceptance of the laboratory and may direct the holder of the certificate of approval to cease claiming that the items tested or inspected by the laboratory are Coast Guard approved, pending a final decision in the matter. The Commandant may direct an investigation into the matter.

* * * * *

PART 160—LIFESAVING EQUIPMENT

44. The authority citation for Part 160 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, and 4302; E.O. 12234, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart 160.021—Hand Red Flare Distress Signals

§ 160.021–9 [Removed]

45. Section 160.021–9 is removed.

Subpart 160.022—Floating Orange Smoke Distress Signals (5 Minutes)

§ 160.022–9 [Removed]

46. Section 160.022–9 is removed.

Subpart 160.023—Hand Combination Flare and Smoke Distress Signals

§ 160.023–9 [Removed]

47. Section 160.023–9 is removed.

Subpart 160.024—Pistol-Projected Parachute Red Flare Distress Signals

§ 160.024–9 [Removed]

48. Section 160.024–9 is removed.

Subpart 160.028—Signal Pistols for Red Flare Distress Signals

§ 160.028–9 [Removed]

49. Section 160.028–9 is removed.

Subpart 160.031—Line-Throwing Appliance, Shoulder Gun Type (and Equipment)

§ 160.031–9 [Removed]

50. Section 160.031–9 is removed.

Subpart 160.036—Hand-Held Rocket-Propelled Parachute Red Flare Distress Signals

§ 160.036–9 [Removed]

51. Section 160.036–9 is removed.

Subpart 160.037—Hand Orange Smoke Distress Signals

§ 160.037–9 [Removed]

52. Section 160.037–9 is removed.

Subpart 160.040—Line-Throwing Appliance, Impulse-Projected Rocket Type (and Equipment)

§ 160.040–9 [Removed]

53. Section 160.040–9 is removed.

Subpart 160.047—Specifications for a Buoyant Vest, Kapok, or Fibrous Glass, Adult and Child

§ 160.047–6a [Removed]

54. Section 160.047–6a is removed.

§ 160.047–6b [Removed]

55. Section 160.047–6b is removed.

§ 160.047–6c [Removed]

56. Section 160.047–6c is removed.

57. Section 160.047–7 is revised to read as follows:

§ 160.047–7 Recognized Laboratory.

(a) A manufacturer seeking Coast Guard approval of a product under this subpart shall follow the approval procedures of subpart 159.005 of this chapter, and shall apply for approval directly to a recognized independent laboratory. The following laboratories are recognized under § 159.010–9 of this chapter, to perform testing and approval functions under this subpart:

Underwriters Laboratories, 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709–3995, (919) 549–1400.

(b) Production oversight must be performed by the same laboratory that performs the approval tests unless, as determined by the Commandant, the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing.

§ 160.047–9 [Removed]

58. Section 160.047–9 is removed.

§ 160.047–10 [Removed]

59. Section 160.047–10 is removed.

Subpart 160.048—Specification for a Buoyant Cushion, Fibrous Glass

§ 160.048–7 [Amended]

60. In § 160.048–7, remove paragraphs (a) and (d) and redesignate paragraphs (b), (c) and (e) as (a), (b) and (c), respectively.

§ 160.048–7a [Removed]

61. Section 160.048–7a is removed.

62. Section 160.048–8 is revised to read as follows:

§ 160.048–8 Recognized Laboratory.

(a) A manufacturer seeking Coast Guard approval of a product under this subpart shall follow the approval procedures of subpart 159.005 of this chapter, and shall apply for approval directly to a recognized independent laboratory. The following laboratories are recognized under § 159.010–9 of this chapter, to perform testing and approval functions under this subpart:

Underwriters Laboratories, 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709–3995, (919) 549–1400.

(b) Production oversight must be performed by the same laboratory that performs the approval tests unless, as determined by the Commandant, the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing.

§ 160.048–9 [Removed]

63. Section 160.048–9 is removed.

§ 160.048–10 [Removed]

64. Section 160.048–10 is removed.

Subpart 160.049—Specification for a Buoyant Cushion, Plastic Foam

§ 160.049–7 [Amended]

65. In § 160.049–7, revise the heading, remove paragraphs (a) and (d), and redesignate paragraphs (b), (c) and (e) as

paragraphs (a), (b) and (c), respectively, to read as follows:

§ 160.049–7 Procedure for approval.

* * * * *

§ 160.049–7a [Removed]

66. Section 160.049–7a is removed.

67. Section 160.049–8 is revised to read as follows:

§ 160.049–8 Recognized Laboratory.

(a) A manufacturer seeking Coast Guard approval of a product under this subpart shall follow the approval procedures of subpart 159.005 of this chapter, and shall apply for approval directly to a recognized independent laboratory. The following laboratories are recognized under § 159.010–9 of this chapter, to perform testing and approval functions under this subpart:

Underwriters Laboratories, 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709–3995, (919) 549–1400.

(b) Production oversight must be performed by the same laboratory that performs the approval tests unless, as determined by the Commandant, the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing.

§ 160.049–9 [Removed]

68. Section 160.049–9 is removed.

§ 160.049–10 [Removed]

69. Section 160.049–10 is removed.

Subpart 160.052—Specification for a Buoyant Vest, Unicellular Plastic Foam, Adult and Child

§ 160.052–8a [Removed]

70. Section 160.052–8a is removed.

§ 160.052–8b [Removed]

71. Section 160.052–8b is removed.

§ 160.052–8c [Removed]

72. Section 160.052–8c is removed.

73. Section 160.052–9 is revised to read as follows:

§ 160.052–9 Recognized Laboratory.

(a) A manufacturer seeking Coast Guard approval of a product under this subpart shall follow the approval procedures of subpart 159.005 of this chapter, and shall apply for approval directly to a recognized independent laboratory. The following laboratories are recognized under § 159.010–9 of this chapter, to perform testing and approval functions under this subpart:

Underwriters Laboratories, 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709–3995, (919) 549–1400.

(b) Production oversight must be performed by the same laboratory that performs the approval tests unless, as determined by the Commandant, the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing.

§ 160.052–11 [Removed]

74. Section 160.052–11 is removed.

§ 160.052–12 [Removed]

75. Section 160.052–12 is removed.

Subpart 160.057—Floating Orange Smoke Distress Signals (15 Minutes)

§ 160.057–9 [Removed]

76. Section 160.057–9 is removed.

Subpart 160.060—Specification for a Buoyant Vest, Unicellular Polyethylene Foam, Adult and Child

§ 160.060–8a [Removed]

77. Section 160.060–8a is removed.

§ 160.060–8b [Removed]

78. Section 160.060–8b is removed.

§ 160.060–8c [Removed]

79. Section 160.060–8c is removed.

80. Section 160.060–9 is revised to read as follows:

§ 160.060–9 Recognized Laboratory.

(a) A manufacturer seeking Coast Guard approval of a product under this subpart shall follow the approval procedures of subpart 159.005 of this chapter, and shall apply for approval directly to a recognized independent laboratory. The following laboratories are recognized under § 159.010–9 of this chapter, to perform testing and approval functions under this subpart:

Underwriters Laboratories, 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709–3995, (919) 549–1400.

(b) Production oversight must be performed by the same laboratory that performs the approval tests unless, as determined by the Commandant, the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing.

§ 160.060–11 [Removed]

81. Section 160.060–11 is removed.

§ 160.060–12 [Removed]

82. Section 160.060–12 is removed.

Subpart 160.064—Marine Buoyant Devices

§ 160.064–5 [Removed]

83. Section 160.064–5 is removed.

§ 160.064–5a [Removed]

84. Section 160.064–5a is removed.

§ 160.064–5b [Removed]

85. Section 160.064–5b is removed.

86. Section 160.064–7 is revised to read as follows:

§ 160.064–7 Recognized Laboratory.

(a) A manufacturer seeking Coast Guard approval of a product under this subpart shall follow the approval procedures of subpart 159.005 of this chapter, and shall apply for approval directly to a recognized independent laboratory. The following laboratories are recognized under § 159.010–9 of this chapter to perform testing and approval functions under this subpart:

Underwriters Laboratories, 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709–3995, (919) 549–1400.

(b) Production oversight must be performed by the same laboratory that performs the approval tests unless, as determined by the Commandant, the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing.

§ 160.064–8 [Removed]

87. Section 160.064–8 is removed.

§ 160.064–9 [Removed]

88. Section 160.064–9 is removed.

Subpart 160.066—Distress Signal for Boats, Red Aerial Pyrotechnic Flare

89. In § 160.066–11, paragraph (c) is revised to read as follows:

§ 160.066–11 Approval procedures.

* * * * *

(c) The approval tests must be performed by an independent laboratory accepted by the Commandant under Subpart 159.010 of this chapter.

§ 160.066–18 [Removed]

90. Section 160.066–18 is removed.

Subpart 160.077—Hybrid Inflatable Personal Flotation Devices

91. Section 160.077–9 is revised to read as follows:

§ 160.077–9 Recognized Laboratory.

(a) A manufacturer seeking Coast Guard approval of a product under this subpart shall follow the approval procedures of subpart 159.005 of this

chapter, and shall apply for approval directly to a recognized independent laboratory. The following laboratories are recognized under § 159.010–9 of this chapter, to perform testing and approval functions under this subpart:

Underwriters Laboratories, 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709–3995, (919) 549–1400.

(b) Production oversight must be performed by the same laboratory that performs the approval tests unless, as determined by the Commandant, the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing.

Dated: June 1, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–15076 Filed 6–22–95; 8:45 am]

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Friday
June 23, 1995

Part IV

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 151

Land Acquisitions (Nongaming); Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

RIN 1076–AC51

Land Acquisitions (Nongaming)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: This final rule modifies three existing sections within Part 151 (Land Acquisitions) and creates a new section which contains additional criteria and requirements used by the Secretary in evaluating requests for the acquisition of lands by the United States in trust for federally recognized Indian tribes when lands are outside and noncontiguous to the tribes' existing reservation boundaries.

EFFECTIVE DATE: July 24, 1995.

FOR FURTHER INFORMATION CONTACT: Alice A. Harwood, Chief, Branch of Technical Services, Division of Real Estate Services, Bureau of Indian Affairs, Room 4522, Main Interior Building, 1849 C Street, NW, Washington, DC 20240, Telephone No. (202) 208–3604.

SUPPLEMENTARY INFORMATION: The primary authors of this document are Stan Webb, Lee Maytubby, and Alice A. Harwood along with the members of the Regulation Task Force.

On July 15, 1991, the proposed rule for off-reservation land acquisitions for Indian tribes was published in the **Federal Register** (Vol. 56, No. 135, pages 32278–32280).

The Department certifies to the Office of Management and Budget that these final regulations meet the standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

The Department has determined that this rule:

- does not have significant federalism effects.
- is not a major rule under Executive Order 12866 and will not require a review by the Office of Management and Budget.
- will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) because this rule applies only to Indian applicants.
- does not have significant takings implications under E.O. 12630.
- does not have significant effects on the economy, nor will it result in increases in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographical regions.
- does not have any adverse effects on competition, employment, investment, productivity, innovation, or the export/import market.
- is categorically excluded from the National Environmental Policy Act of 1969 because it is of an administrative, technical, and procedural nature. Therefore, neither an environmental assessment nor an environmental impact statement is warranted.

Office of Management and Budget approved the information requested in Sections 151.9, 151.10, 151.11(c) and 151.13 under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0100. This information is required from Indian tribes and individuals to acquire land in trust status and used to assist the Secretary in making a determination. Response to this request is required to obtain a benefit.

Public reporting for this information collection is estimated to average 4 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct your comments regarding the burden estimate or any other aspect of this information collection to the Bureau of Indian Affairs, Information Collection Clearance Officer, Room 337–SIB, 18th and C Streets, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs (Project 1076–0100), Office of Management and Budget, Washington, DC 20502.

The annual number of tribal requests to place lands in trust is small. There will be some costs incurred by the requesting tribes in providing information to the Secretary.

Summary of Comments on Proposed Rule

Sixty-seven comments were submitted in response to the July 15, 1991, **Federal Register** publication of proposed amendments to 25 CFR Part 151.

A number of commenters expressed a fear that the regulations would undermine tribal sovereignty and self-determination and inhibit the development of reservation economies, and that they would be inconsistent with the Indian policy statement issued by President Bush on June 14, 1991. There is additional concern that the proposed rules would:

(1) afford state and local governments a virtual veto power over tribal governments;

(2) promote a ''guardian-ward'' relationship between the United States and the tribes, rather than the preferred ''government-to-government'' relationship; and

(3) force tribes to divert their limited resources into ''unnecessary'' efforts aimed at regulatory compliance;

(4) be inconsistent with the federal trust responsibility to Indian tribes, and

(5) further complicate an already cumbersome and time-consuming process by placing tribal interests lower than those of state and local governments.

One commenter argued that a ''federalism assessment'' would be needed under Executive Order 12612, and another maintained that a ''compete regulatory analysis'' would be required under the Regulatory Flexibility Act.

Due to comments received, the gaming section, proposed as 151.12 has been deleted and will be incorporated into a new CFR part under a separate rulemaking.

Section 151.10 On-Reservation Acquisition

Comment: It was suggested that 25 CFR 151.10(e) be revised to reflect the BIA's position that Indian-owned fee lands within the boundaries of a reservation should be exempt from state property.

Response: It should be noted that the United States Supreme Court recently held that (under certain circumstances) on-reservation fee lands *will* be subject to local property taxes. Therefore, 25 CFR 151.10(e) is not revised.

Comment: Comments suggested that *all* of the existing rules be made inapplicable to on-reservation acquisitions, and another requested a clarification that the strict notice and consultation requirements set forth in the proposed 25 CFR 151.11 would not apply to acquisitions of lands which are either within the boundaries of a reservation or contiguous thereto.

Response: It should be noted that the decision whether to accept title in trust status is a discretionary one, and that the Secretary has chosen to regulate the decision-making process in order to promote national uniformity.

The notice and comment procedures, which do not require formal consultation, were informally adopted in 1980. Notice and *comment* procedures are incorporated in the introductory paragraph to 25 CFR 151.10.

Comment: It was also suggested that the proposed rules be revised to accept legislatively-mandated acquisitions from compliance with 25 CFR 151.10 and the proposed 151.11. An alternatively suggested that they be revised to specify that certain provisions

would apply even when a complete evaluation of the acquisition would be precluded by legislation.

Response: The introductory paragraph to both 25 CFR 151.10 and the new 25 CFR 151.11 exempts such legally mandated acquisitions.

Section 151.10(h) Hazardous Substances and NEPA Compliance

Comment: Commenters addressed the requirement that acquired property ''be free of all hazardous and toxic material as required by 602 DM 2 Land Acquisitions: Hazardous Substances Determinations.'' It was suggested that an acquisition be allowed where the proposed use of the land would involve hazardous substances, or where identified substances have been safely isolated.

Response: It should be noted that the Secretary retains the power to approve any acquisition ''for good cause,'' i.e., where the benefits of the acquisition would clearly outweigh the potential risks.

Comment: Commenters suggested that the proposed rule be modified to more accurately reflect the policy set forth at 602 DM 2.

Response: The policy set forth in the manual attempts to limit potential federal liability by prohibiting acquisitions where ''an expenditure of Departmental funds is required for cleanup of such real estate, except at the direction of Congress, or for good cause with the approval of the Secretary.'' The rule is modified to reference the ''extent to which the applicant has provided information that allows the Secretary to comply'' with the Departmental Manual.

Comment: Commenters also stated that the regulation would be too restrictive, suggesting that exceptions be made when:

(1) the seller agrees to indemnify the acquiring tribe and the United States;

(2) the estimated remedial costs would be minimal, or the acquiring tribe has adopted a corrective action plan;

(3) the waste has been safely isolated, or the land value is ''sufficient'' to justify the acquisition; or

(4) the acquiring tribe wishes to utilize the land for such purposes as waste disposal, incineration, or recycling.

Response: 602 DM 2 suggests that the survey process must be completed in *all* cases (with indemnification to be *required* in those cases where contaminated lands are to be acquired).

602 DM 2 permits the acquisition of contaminated lands which can be restored without a reprogramming of funds.

Comment: It was suggested that the proposed rule be extended to *all* federal acquisitions, and another recommended that the rule specify the types of clearances needed and the extent to which the BIA would absorb the cost of site surveys.

Response: 602 DM 2 applies to all agencies within the Department of the Interior.

The guidelines provide for a three-tiered survey process, with approval authority retained by the Department. However, funding may be determined on a case by case basis.

Comment: It was recommended that the ''rigorous'' innocent purchaser provisions in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) be made applicable to tribal land acquisitions.

Response: It should be noted that such a defense only protects purchasers who ''did not know and had no reason to know'' that they were acquiring contaminated property. (The proposed BIA guidelines provide for a survey process which is intended to ensure the availability of this defense.)

Comment: Commenters suggested that the proposed rules be revised to require compliance with the National Environmental Policy Act of 1969 (NEPA).

Response: The new 25 CFR 151.10(h) also requires compliance with the BIA's ''final revised implementing procedures'' for NEPA. In 1988, the procedures were published in the **Federal Register** (after a public comment period) and added to the Departmental Manual at 516 DM 6, Appendix 4.

Section 151.11 Off-reservation Acquisitions

Comment: Comments addressed the general premise that more stringent rules are needed to govern the trust acquisition of lands which are ''off-reservation'' (hereinafter meaning lands ''outside of and noncontiguous to'' the boundaries of an existing reservation). Other comments suggested that lands which are contiguous to existing reservation boundaries should be treated as other lands outside such boundaries.

Response: It should be noted that the acquisition of contiguous lands may be analogized to annexations by municipalities. It should be noted that treatment may be afforded by the Secretary on a case-by-case basis.

Comment: Commenters voiced concerns relative to ''the loss of regulatory control and removal of the property from the tax rolls.'' Specifically, they questioned whether the proposed rules would protect the states' power to regulate the appropriation and administration of water on acquired lands, and suggested that a mechanism for the collection of ''appropriate'' state taxes be incorporated in the rules.

Response: The BIA has instructed its field offices that proposed acquisitions of off-reservation contiguous lands for commercial purposes should be carefully scrutinized with consultation considered to avoid jurisdictional conflicts.

The new 25 CFR 151.11(d) establishes a consultation process which may give rise to agreements which could result in resolution of the above types of regulatory issues.

Comment: Other comments addressed the need for flexibility in applying the proposed rules to:

(1) newly recognized tribes, restored tribes, and landless tribes (including those whose land bases consist of scattered sites);

(2) lands within tribal consolidation areas, tribal service areas, and ancestral areas or tribal homelands; and

(3) acquisitions for non-commercial purposes, such as housing, recreation, and mineral development, resource protection or wildlife management.

Response: It should be noted that the revised introductory paragraph exempts acquisitions on behalf of newly recognized or restored tribes, when such acquisitions are ''legally mandated'' by legislation or court order.

Designated (off-reservation) tribal consolidation areas will be treated as other off-reservation lands, pending the issuance of further rules under the Indian Financing Act of 1974 and the Indian Land Consolidation Act (ILCA); tribal service areas will be treated as other off-reservation lands, unless such areas fall within the exception for ''legally mandated'' acquisitions. The new 25 CFR 151.11(b) allows landless tribes (i.e., those without any *trust* lands) to acquire land within their aboriginal homelands, subject to the other restrictions in 25 CFR 151.11.

Section 151.11(b) Geographic Limitations

Comment: Those provisions which prohibit off-reservation acquisitions of ''out-of-state'' lands (i.e., lands in a state other than that in which the acquiring tribe's ''reservation or trust lands'' are located) were opposed on the grounds that out-of-state lands may be historically significant, vital to tribal economic self-sufficiency, or within a designated tribal consolidation area or tribal service area. Specifically, some of

the commenters suggested that the proposed rule would discriminate against geographically isolated tribes, and should not apply to acquisitions for gaming purposes [due to preemption by the Indian Gaming Regulatory Act (IGRA)].

The exception on out-of-state acquisitions, was largely attacked as being too vague and inflexible. However, one commenter indicated that the exception should be modified to flatly prohibit *any* out-of-state acquisition for gaming purposes. Another commenter objected to the provision which would implicitly require that excepted tribes provide greater justifications for out-of-state acquisitions. Another comment suggested that the rule be expanded to require that such justifications include evaluations of alternative sites.

Response: The provisions which prohibit off-reservation acquisitions of ''out-of-state'' lands have been deleted. The portion of the proposed rule which referred to administrative costs has been deleted and other minor editorial changes (including the elimination of the term ''current or former reservation'') have been made in 25 CFR 151.11(b) of this Part.

The rule has not been relaxed for acquisitions of lands within tribal consolidation areas or tribal services areas, unless such acquisitions are legally mandated. The blanket exception for landless tribes has been narrowed to require that any lands to be acquried on behalf of such tribe be located in a state in which the tribe's aboriginal homelands are located. (Guidance in identifying ''aboriginal homelands'' may be obtained from federal court decisions and Indian Claims Commission proceedings.) It should be noted that the absence of more proximate economic opportunities would provide part of the ''greater justification'' required by 25 CFR 151.11(b) of this Part.

Comment: Comments about greater justifications as distance increases suggested that such distance should be irrelevant. Commenters questioned whether the use of the phrase ''current or former reservation'' was meant to distinguish the general definition of ''Indian reservation'' set forth in 25 CFR 151.2. They also questioned whether administrative costs should be considered, under either the existing 25 CFR 151.10 or the provision in the proposed rule which would suggest that such costs be addressed in tribal justifications.

Response: It should be noted that the BIA has informally required such justifications for acquisitions of distant lands since 1980. Section 20(c) of IGRA expressly restricts the Secretary's authority to acquire land for gaming purposes.

The rule's exception for acquisitions on behalf of tribes which ''have lands in one state but are located near the border of another state'' has been narrowed (to ensure that the land to be acquired is located near existing *trust* land). The term ''near'' has been retained (to be defined on a case-by-case basis, in the exercise of the Secretary's discretion).

Section 151.11(b) Acquisitions in Non-Indian Communities

Comment: Commenters objected to the provision which would require that tribes show that trust status is essential to the planned use of off-reservation property which is located ''within an urbanized and primarily non-Indian community.'' Commenters noted that the proposed rule would have the following anomalous results:

(1) Off-reservation acquisitions which would *not* have adverse jurisdictional impacts (i.e., where trust status is not essential to the planned use) would be prohibited, even thought he apparent purpose of the rule was to discourage gaming acquisitions and other acquisitions which *would* have such impacts;

(2) ''Low-impact'' off-reservation acquisitions within urban communities might be prohibited, even through ''high-impact'' on-reservation acquisitions within similar communities would be permitted;

(3) Tribal members how have relocated to urban communities would be denied the opportunity to benefit directly from many potential tribal economic development projects; and

(4) The cost of many tribal initiatives and federal housing projects would be driven up due to the relatively higher infrastructure costs associated with on-reservation construction.

Commenters criticized the proposed rule on the ground that the phrase ''urbanized and primarily non-Indian community'' was vague and over-broad, and one of the commenters expressed concern that the rule could possibly be applied to limit acquisitions in areas which are primarily rural in character.

Another commenter noted that, while trust status might not be essential for a particular use, the economic benefits to be derived from such use (which would also be covered by the proposed rule) could depend on trust status; it was thus suggested that the ''essential'' requirement be more clearly defined.

Response: 25 CFR 151.11(c) has been revised and the last sentence has been deleted. This change is based on the fact that the new 25 CFR 151.11(b) will already require that tribes whose reservations are not located in urban communities provide a ''greater justification'' when lands in such communities are to be acquired. [It is also anticipated that ''high-impact'' acquisitions in urban communities will be limited by the consultation process set forth in 25 CFR 151.11(d) of this Part.] The deletion of the last sentence is also based on the specific criticisms set forth in the comments, i.e., that the proposed rule would be ambiguous, anti-growth, and detrimental to tribes whose reservations are located in urban communities (and other tribes whose justifications would otherwise suffice).

Section 151.11(c) Economic Development Plans

Comment: Commenters suggested that economic development plans should not be needed when land is being acquired for non-commercial purposes.

Response: An introductory clause has been added to exempt non-business acquisitions.

Comment: Commenters also indicated that the proposed rule would undermine tribal sovereignty and self-sufficiency by:

(1) Allowing the BIA to second-guess tribal leaders' business decisions;

(2) Forcing the disclosure of confidential business information; and

(3) Preventing tribes from acquiring investment properties for future development.

Response: It should be noted that the likelihood of success of an off-reservation project has long been considered by the Secretary in deciding whether to accept title to the underlying lands in trust status. [It should also be noted that the feasibility of the proposed use would already be considered pursuant to 25 CFR 151.10(c), which will be incorporated at 25 CFR 151.11(a) of this Part.]

Comment: Another commenter suggested that pre-acquisition planning would necessarily be so speculative as to be of minimal value, and one commenter recommended that the planning requirement be made applicable to only those acquisitions which are opposed by local governing bodies.

Response: 25 CFR 151.11(c) of this Part will merely require that the acquiring tribe has a plan for the *immediate* development or utilization of the property, and that the plan reflects that a prudent buyer would complete the acquisition (given the projected return on investment, incidental benefits, and risks associated with the proposed use). It should be noted that certain confidential business

information would be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552.

Seciton 151.11(d) Ordinances

Comment: Commenters suggested that the scope of the proposed rule be narrowed to better reflect its apparent purpose (to protect the health, safety, and welfare of the general public); specifically, ti was suggested that the rule be made applicable only to acquisitions for commercial development purposes (or, alternatively, that it be made inapplicable to acquisitions for housing purposes).

Commenters criticized the proposed rule on the grounds that the ''comparability'' standard is too vague, and the incorporation of *all* local ordinances too broad. Individual commenters specifically asked whether the proposed rule would:

(1) mandate absolute compliance with local ordinances, or merely ''a documented effort'' to adopt *similar* standards (as suggested in the preamble to the proposed rules);

(2) require that tribes also adopt comparable implementation processes and enforcement capabilities, or modify their adopted ordinances in order to comply with local ordinances; and

(3) allow tribes to adopt higher standards than the relevant local governing bodies, or freely modify adopted ordinances to accommodate changes in land use. Individual commenters suggested that the rule cover only those ordinances which pertain to land use or construction, or those which are identified by local government through consultation.

Response: It is anticipated that the consultation process described in Section 25 CFR 151.11(d) of this Part will result in the negotiation of agreements between tribes and local government, relative to regulatory issues which pertain to public health, safety, and welfare. Where such agreements do not result, and jurisdictional issues remain unresolved, it will be left to the Secretary's discretion to balance the potential benefits to be derived by the acquiring tribe against the potential harm to the general public. (It should also be noted that lands which are acquired with federal funds may be subject to certain federal standards.) The deletion of the proposed 25 CFR 151.11(d) is also based on the criticisms set forth in the comments, i.e., that the proposed rule would be shortsighted, overly cumbersome, and largely unenforceable.

Comment: Commenters expressed concern that the delimiting language in the proposed rule would allow local government to tax off-reservation trust lands and the activities conducted thereon.

Response: It should be noted that the only taxation issues to be *directly* considered in the consultation process are those which relate to a proposed acquisition's potential impacts on real property taxes or special assessments. (Other tax impacts may also be considered, if they will curtail the local government's ability to provide *specific* community services.)

Comment: Commenters indicated that the proposed rule would contradict other federal policies supporting tribal sovereignty and self-determination. It was noted that local ordinances may reflect political considerations wholly unrelated to concerns about public health and safety. It was suggested that the rule flatly provide that the lands to be acquired would be subject to state regulatory jurisdiction. Commenters questioned whether the local ordinances would have to be formally adopted prior to the completion of the acquisition process.

Response: It should be noted that current law suggests that (in the absence of cooperative agreements) tribal, federal, and state/local jurisdiction over off-reservation trust lands will be mixed, depending on the activities and parties to be regulated. The proposed 25 CFR 151.11(d) has been deleted.

Section 151.11(e) Notice and Consultation

The proposed 25 CFR 151.11(e) will be re-designated as 25 CFR 151.11(d).

Comment: The provision which requires that ''affected state and local governments'' be notified of all proposed off-reservation acquisitions, and given thirty days in which to provide written comments, was criticized as being both too vague in its reference to ''affected'' governments and too restrictive in its definition of the comment period. Commenters suggested that the proposed rule be clarified to ensure that neighboring jurisdictions would be given an opportunity to comment, and another suggested that the rule specify which state and local offices would be contacted.

Response: Based on the BIA's past experience with its informal consultation procedures, the 30-day response time set forth in the proposed 25 CFR 151.11(e) (re-designated 151.11(d)) has been retained in the new rule.

Relative to these revisions, it should be noted that (1) the narrower definition of the ''notified party'' will generally mean city or county officials, but will also recognize the wide variation in the designations and functions of ''local governments,'' as well as the fact that many such governments operate as administrative agents for the states (especially in rural settings); (2) the burden of obtaining additional information from state officials, neighboring jurisdictions, or other units of local governments (including special function districts, public authorities, or higher political subdivisions) will rest with the local officials who are directly notified by the BIA; and (3) the BIA notices will identify the land to be acquired and the acquiring tribe (as has been done under the informal notice and comment procedures), as well as the tribe's proposed use (which has generally not been identified in the past).

Comment: Provisions which would require tribes to consult with opposing local governments were objected to on the ground that it would undermine tribal sovereignty by granting state and local governments an effective veto power over tribal acquisitions. Commenters acknowledged that some consultation process would be essential to the tribes' implementation of a government-to-government relationship, others said that such a process would be marred by racial bias and discrimination.

Response: It should be noted that tribal governmental authority over land will generally not attach until the Secretary accepts title to this land in trust status. It should also be noted that the new 25 CFR 151.11(d) will not create a veto power, and that objections which are not made in good faith (or which are clearly biased) will be discounted in the decision-making process.

As for the assertion that the case precedent for the BIA's informal consultation procedures has been overruled, it should be noted that the preamble to the original 25 CFR 120a (now 25 CFR 151) cited the need for a uniform policy as the basis for its issuance; it should also be noted that (while the case cited by the commenter held that local governments are not entitled to formal notification as a matter of due process) the preamble to the proposed rules indicated that the notice requirement set forth in the proposed 25 CFR 151.11(e) (re-designated 151.11(d)) would be based primarily on principles of federalism.

Comment: Other commenters recommended that the comment period be extended, and requested that additional supplemental information be furnished with the notifications. Others suggested, however, that certain proposals would be unduly

compromised by the release of additional information, and another indicated that the case precedent for the BIA's existing (non-regulatory) notice requirement had been overruled.

Response: 25 CFR 151.11(d) has been revised to (1) *generally* identify the local government to be notified as the ''lowest political subdivision having jurisdiction over the land to be acquired''; and (2) codify certain informal procedures (relative to the solicitation of specific information and the presumption of no impact when a response is not received within thirty days) which have been implemented by BIA since 1980.

Comment: Commenters addressed those provisions within the proposed rule which would describe the consultation process. (Where a state or local government formally opposes a proposed acquisition, or ''raises concerns'' relative thereto, the rule would require that the acquiring tribe ''consult with them and attempt to resolve any conflicts including, but not limited to, issues concerning taxation, zoning and jurisdiction''; the proposed rule would also permit the tribe to submit documentation of its discussions with state or local governments, whether the formal consultation process is triggered or not.) It was suggested that the consultation process should be triggered only by good faith objections, rather than mere ''concerns,'' and that the proposed rule be clarified to reflect that a tribe's burden would be met by a mere good faith *attempt* at resolution. Where differences remain unresolved after consultation, it was suggested that state and local governments should be allowed to submit their own documentation of consultation efforts. Another suggested that a formal dispute resolution process be incorporated in the proposed rule, and a (non-BIA) federal official recommended that the BIA assume a mediation role.

It was also recommended that the consultation process be terminated at the end of a specific time period. Other commenters said that the process should be made: (1) applicable to court-ordered acquisitions not otherwise subject to 25 CFR 151.10 or 151.11 of this Part; (2) inapplicable to acquisitions of off-reservation lands which have been designated in land consolidation plans approved pursuant to ILCA; and (3) consistent with provisions in the Federal Land Policy and Management Act (FLPMA) which require state approval.

Response: With respect to the comments which suggested that the rule provide for arbitration or mediation where differences remain unresolved after consultation, it should again be noted that such cases will be left to the Secretary's discretion (to balance the potential benefits to be derived by the acquiring tribe against the potential harm to the general public). With respect to the comments which suggested that the consultation process be made applicable to court-ordered acquisitions, it should again be noted that the introductory paragraph to 25 CFR 151.11 of this Part will *expressly* exempt such ''legally mandated'' acquisitions. With respect to the comment which suggested that the new rule be made inapplicable to acquisitions of off-reservation lands which have been designated in approved land consolidation plans, it should again be noted such lands will be treated as other off-reservation lands (and thus subject to 25 CFR 151.11) pending the promulgation of further rulemaking. With respect to the comment which suggested that the consultation process be made consistent with the Federal Land Policy and Management Act (FLPMA), it should be noted that Congress has clearly distinguished conveyances of public lands (which are subject to consultation, under FLPMA) for acquisitions on behalf of sovereign tribes (which are not subject to any statutory consultation requirements).

Section 151.11(e) Delegations of Authority and Appealability

Comment: Commenters objected to those provisions within the proposed 25 CFR 151.11(e) (re-designated 151.11(d)) which indicate that the Assistant Secretary-Indian Affairs would issue the above-described notifications of proposed off-reservation acquisitions. It was suggested that the authority to issue such notices and ultimately approve the acquisitions should be delegated to the BIA's agency or area office level, in order to comply with ongoing efforts to reorganize the BIA and decentralize its critical functions. One commenter questioned whether the proposed rule was meant to separate the local BIA staff from the entire acquisition process (where off-reservation lands are to be acquired), and whether the ''final decision'' to be made by the Assistant Secretary would be appealable. It was suggested that the proposed rule specifically provide that the Assistant Secretary's decision would be appealable to the Interior Board of Indian Appeals.

Response: All references to the ''Assistant Secretary—Indian Affairs'' in the proposed 25 CFR 151.11(e) (re-designated 151.11(d)) will be changed to ''Secretary'', as indicated above, and the final sentence in the proposed 25 CFR 151.11(e) (re-designated 151.11(d)) will be deleted.

This change will ensure that all actions will be taken by an authorized official, since 25 CFR 151.2(a) of this Part will define ''Secretary'' to mean ''the Secretary of the Interior or authorized representative.'' It is anticipated that local BIA officials will continue to notify local governments of proposed off-reservation acquisitions, but that the authority to approve certain acquisitions may continue to be held by the Assistant Secretary—Indian Affairs or the BIA Area Directors. It is also anticipated that the recommendations of the intertribal group which recently reported on the possible reorganization of the BIA will be considered in determining which offices should have the ultimate approval authority.

In response to the comments which questioned whether decisions on off-reservation acquisition requests would be appealable, the final sentence in the proposed 25 CFR 151.11(e) (re-designated 151.11(d)) has been deleted. This change is needed to ensure that such decisions will be appealable if they are made below the Assistant Secretary—Indian Affairs' level. If the authority to make such decisions is held by the Assistant Secretary—Indian Affairs, the decision would be ''final'' for the Department of the Interior and therefore not appealable.

Section 151.12 Off-reservation Acquisitions for Gaming

In response to the comments received, it has been determined by the Bureau of Indian Affairs that the proposed section 151.12 of this part will not be adopted and a new part will be added to the 25 CFR pertaining to off-reservation acquisitions for gaming.

List of Subjects in 25 CFR Part 151

Indians—lands, Reporting and recordkeeping requirements.

For reasons set out in the preamble, Part 151 of Title 25, Chapter I of the Code of Federal Regulations is amended as set forth below.

PART 151—LAND ACQUISITIONS (NONGAMING)

1. The authority citation for Part 151 is revised to include 25 U.S.C. 2 and 9 as follows:

Authority: R.S. 161: 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530;

86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 25 U.S.C. 2, 9, 409a, 450h, 451, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d–10, 1466, 1495, and other authorizing acts.

2. In § 151.2, paragraph (a) is revised to read as follows:

§ 151.2 Definitions.

(a) ''Secretary'' means the Secretary of the Interior or authorized representative.

* * * * *

Section 151.10 is amended by revising the section heading and introductory text and by adding a new paragraph (h) to read as follows:

§ 151.10 On-reservation acquisitions.

Upon receipt of a written request to have lands taken in trust, the Secretary will notify the state and local governments having regulatory jurisdiction over the land to be acquired, unless the acquisition is mandated by legislation. The notice will inform the state or local government that each will be given 30 days in which to provide written comments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments. If the state or local government responds within a 30-day period, a copy of the comments will be provided to the applicant, who will be given a reasonable time in which to reply and/or request that the Secretary issue a decision. The Secretary will consider the following criteria in evaluating requests for the acquisition of land in trust status when the land is located within or contiguous to an Indian reservation, and the acquisition is not mandated:

* * * * *

(h) The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, Appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. (For copies, write to the Department of the Interior, Bureau of Indian Affairs, Branch of Environmental Services, 1849 C Street NW, Room 4525 MIB, Washington, DC 20240.)

§§ 151.11 through 151.14 [Redesignated as 151.12 through 151.15]

4. Sections 151.11 through 151.14 are redesignated as 151.12 through 151.15, respectively.

5. A new § 151.11 is added to read as follows:

§ 151.11 Off-reservation acquisitions.

The Secretary shall consider the following requirements in evaluating tribal requests for the acquisition of lands in trust status, when the land is located outside of and noncontiguous to the tribe's reservation, and the acquisition is not mandated:

(a) The criteria listed in Section 151.10 (a) through (c) and (e) through (h);

(b) The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation, shall be considered as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition. The Secretary shall give greater weight to the concerns raised pursuant to paragraph (d) of this section.

(c) Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use.

(d) Contact with state and local governments pursuant to 151.10 (e) and (f) shall be completed upon receipt of a tribe's written request to have lands taken in trust, the Secretary shall notify the state and local governments having regulatory jurisdiction over the land to be acquired. The notice shall inform the state and local government that each will be given 30 days in which to provide written comment as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments.

6. Newly designated § 151.15 is revised to read as follows:

§ 151.15 Information collection.

(a) The information collection requirements contained in Sections 151.9; 151.10; 151.11(2)(c), and 151.13 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0100. This information is being collected to acquire land into trust on behalf of the Indian tribes and individuals, and will be used to assist the Secretary in making a determination. Response to this request is required to obtain a benefit.

(b) Public reporting for this information collection is estimated to average 4 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any other aspect of this information collection to the Bureau of Indian Affairs, Information Collection Clearance Officer, Room 337–SIB, 18th and C Streets, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs [Project 1076–0100], Office of Management and Budget, Washington, DC 20502.

March 20, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–15215 Filed 6–22–95; 8:45 am]

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federal register

Friday
June 23, 1995

Part V

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 19

Federal Reserve System

12 CFR Part 263

Federal Deposit Insurance Corporation

12 CFR Part 308

Department of the Treasury

Office of Thrift Supervision

12 CFR Part 509

National Credit Union Administration

12 CFR Part 747

Uniform Rules of Practice and Procedure; Proposed Rules

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 19

[Docket No. 95–11]

RIN 1557–AB43

FEDERAL RESERVE SYSTEM

12 CFR Part 263

[Docket No. R–0878]

RIN 7100–AB23

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

RIN 3064–AB49

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 509

[Docket No. 95–116]

RIN 1550–AA79

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 747

Uniform Rules of Practice and Procedure

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury; and National Credit Union Administration.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board of Governors), Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision (OTS), and National Credit Union Administration (NCUA) are proposing changes to the Uniform Rules of Practice and Procedure for Administrative Hearings (Uniform Rules) and to their agency specific rules of administrative practice and procedure (Local Rules).

The proposal is intended to clarify certain provisions and to increase the efficiency and fairness of administrative hearings.

DATES: Comments must be received by August 22, 1995.

ADDRESSES: Comments should be directed to: *OCC:* Communications Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219, Attention: Docket No. 95–11. Comments may be inspected and photocopied at the same location.

Board of Governors: Mr. William Wiles, Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue NW., Washington, DC 20551, Attention: Docket No. R–0878 or delivered to Room B–2222, Eccles Building, between 8:45 a.m. and 5:15 p.m. Comments may be inspected in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board of Governor's rules regarding availability of information.

FDIC: Robert Feldman, Acting Executive Secretary, Attention: Room F–402, Federal Deposit Insurance Corporation, 550 17th, Street NW., Washington, DC 20429. Comments may be delivered to Room F–400, 1776 F Street NW., Washington, DC 20429, on business days between 8:30 a.m. and 5 p.m.; sent by facsimile transmission to FAX number 202–898–3838; or sent by Internet E-mail to Comments@Fdic.gov. Comments will be available for inspection and photocopying in Room 7118, 550 17th Street NW., Washington, DC between 8:30 a.m. and 5 p.m. on business days.

OTS: Chief, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, Attention Docket No. 95–116. These submissions may be hand delivered to 1700 G Street NW., from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX number 202–906–7755. Comments will be available for inspection at 1700 G Street NW., from 1 p.m. until 4 p.m. on business days.

NCUA: Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA, 22314–3428. Comments will be available for inspection at the same location.

FOR FURTHER INFORMATION CONTACT:

OCC: Daniel Stipano, Director, Enforcement and Compliance Division 202–874–4800, or Daniel Cooke, Attorney, Legislative and Regulatory Activities Division 202–874–5090.

Board of Governors: Douglas Jordan, Senior Attorney, Legal Division 202–452–3787, Ann Marie Kohlligian, Senior Counsel, Division of Banking Supervision and Regulation 202–452–3528, or Katherine Wheatley, Assistant General Counsel 202–452–3779. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson 202–452–3544.

FDIC: Nancy Alper, Counsel, Legal Division 202–898–3720 or Andrea Winkler, Counsel, Legal Division 202–898–3764.

OTS: Eliot Goldstein, Counsel, Division of Enforcement 202–906–7162; or Karen Osterloh, Counsel, Banking and Finance, Regulations and Legislation Division, Chief Counsel's Office 202–906–6639.

NCUA: Steven Widerman, Attorney, Office of General Counsel 703–518–6557.

SUPPLEMENTARY INFORMATION:

A. Background

Section 916 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Pub. L. 101–73, 103 Stat. 183 (1989), required the OCC, Board of Governors, FDIC, OTS, and NCUA (agencies) to develop uniform rules and procedures for administrative hearings. The agencies each adopted final Uniform Rules in August, 1991.[1] Based on their experience since then, the agencies have identified sections of the Uniform Rules that should be modified. Amendments to those provisions are proposed today.

Each agency also has local rules of administrative adjudication (Local Rules) that are distinct from the Uniform Rules and unique to the individual agency. The OCC and OTS propose to amend certain sections of their Local Rules that they believe should be improved and clarified. The FDIC, Board of Governors, and NCUA are not proposing to amend their Local Rules at this time.

B. Uniform Rules

While most elements of the proposal are technical modifications or clarifications, two of the proposed changes are more substantive: (1) Proposed § ____.24, which clarifies the scope of document discovery; and (2) proposed § ____.35, which prohibits multiple counsel from examining a single witness.

The agencies invite comments on all aspects of this joint proposed rule.

[1] The agencies issued a joint notice of proposed rulemaking on Monday, June 17, 1991 (56 FR 27790). The agencies promulgated their final rules on the following dates: OCC on August 9, 1991 (56 FR 38024); Board of Governors on August 9, 1991 (56 FR 38052); FDIC on August 9, 1991 (56 FR 37975); OTS on August 12, 1991 (56 FR 38317); and NCUA on August 8, 1991 (56 FR 37767).

C. Local Rules

The OCC's and OTS's proposed changes to their Local Rules are discussed in separate section-by-section analyses. Comments on Local Rules should be sent only to the appropriate agency.

D. Section-by-Section Summary and Discussion of Amendments to the Uniform Rules

Section ____.1 Scope.

The proposal adds two statutory provisions to the list of civil money penalty provisions to which the Uniform Rules apply. These two provisions were enacted by the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), Pub. L. 103–325, 108 Stat. 2160.

The first provision, CDRI section 406, amends the Bank Secrecy Act (BSA) (31 U.S.C. 5321) to require the Secretary of the Treasury to delegate authority to the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) to impose civil money penalties for BSA violations.

The second, CDRI section 525, amends section 102 the Flood Disaster Protection Act of 1973 (FDPA) (42 U.S.C. 4012a) to give each ''Federal entity for lending regulation'' authority to assess civil money penalties under the FDPA. Under the FDPA, the term ''Federal entity for lending regulation'' includes the agencies and the Farm Credit Administration.

Section ____.6 Appearance and practice in adjudicatory proceedings.

The proposal seeks to ensure that counsel is always available to accept service of process for a party even if that counsel withdraws from representation. The proposed change clarifies that counsel who withdraws after filing a notice of appearance on behalf of a party may be required by the administrative law judge (ALJ) to accept service of process for that party until a new counsel has filed a notice of appearance or until the party indicates that he or she will proceed on a *pro se* basis.

Section ____.8 Conflicts of interest.

Under the current Uniform Rules, counsel representing two or more parties to a proceeding or a party and an institution to which notice of the proceeding must be given must certify that: (1) Counsel has discussed the possibility of conflicts of interest with each party or institution; and (2) the parties and institution have advised counsel that there are no material or anticipated conflicts of interest and have waived the right to assert conflicts of interest. The proposal makes two changes to this provision.

First, the proposal expands the situations in which counsel must obtain a waiver and provide certification. The current Uniform Rules recognize the potential for conflicts for non-party institutions ''to which notice of the proceedings must be given.'' Notice must be given to a non-party institution only in very limited circumstances.[2]

Thus, many situations involving institutions as to which a genuine potential for conflict exist are excluded from the certification and waiver process. The proposal addresses these situations by requiring counsel to obtain a waiver from, and provide certification for, any non-party that counsel represents on a matter relevant to an issue in the proceeding.

The agencies do not intend the proposal to supersede any state rules of professional responsibility that impose more stringent ethical standards.

Second, the proposal removes current § ____.8(b)(2), which requires that counsel certify that each party or institution has advised counsel that there are no material conflicts. The current Uniform Rules require counsel to certify both that each client has asserted that there are no conflicts and that each client has waived any conflict. The agencies believe that the provision that requires counsel to certify that each client has asserted that there are no material conflicts is superfluous because the responsibility for identifying potential conflicts resides with counsel not with counsel's client.

Section ____.11 Service of papers.

The current Uniform Rules permit parties, agency heads, and ALJs to serve a subpoena by delivering the subpoena to a person of suitable age and discretion at the subpoenaed person's residence and by any other manner reasonably calculated to give actual notice. The current Uniform Rules do not explicitly permit service to be made by delivery to the person's place of work.

The proposal expressly permits service by delivery to a person's place of work. The proposal adds the words ''or place of work'' after the word ''residence'' each time it appears, thereby clarifying that delivery to a person of suitable age and discretion at the subpoenaed person's place of work is reasonably calculated to give actual notice of service. The agencies believe that permitting service at a person's place of work is a more practical and efficient means of serving the individual.

Section ____.12 Construction of time limits.

Under the current Uniform Rules, intermediate Saturdays, Sundays, and Federal holidays are not counted in the computation of time when the time period within which a party must perform an act is ten days or less. The current Uniform Rules also allow additional time when a party serves papers by mail, delivery service, or electronic media transmission. There has, however, been some confusion regarding whether this additional time counts for purposes of determining whether the time period within which a party must perform an act comes within the ten-day threshold.

The proposal clarifies that the additional time allotted for responding to papers served by mail, delivery service, or electronic media transmission under § ____.12(c) is not counted in determining whether an act is required to be performed within ten days.

In some instances, parties have also been unsure whether they must count Saturdays, Sundays, and holidays in the calculation of the additional time allotted for responding to papers served by mail, delivery service, or electronic media transmission under § ____.12(c). The proposal clarifies that the additional time in § ____.12(c) is in calendar days and, therefore, a party must count Saturdays, Sundays, and holidays.

Section ____.20 Amended pleadings.

Under the current Uniform Rules, a party is required to obtain leave of the ALJ to amend a notice or answer. In addition, if a party objects to the admission of certain evidence on the ground that the evidence is not within the issues raised in the notice or answer, the party seeking admission of the evidence must obtain leave of the ALJ to amend the notice or answer. The agencies believe that a motion to amend a notice or answer unnecessarily delays the administrative proceeding because, while these motions are generally granted, the opposing party takes time to respond to the motion and the ALJ takes time to rule on the motion.

The proposal permits a party to amend its pleadings without leave of the ALJ. It also permits the ALJ to admit

[2] *See, e.g.,* 12 U.S.C. 1818(e) (requiring the appropriate Federal banking agency to serve a copy of a suspension order when an institution-affiliated party is suspended for engaging in unsafe and unsound practices, for a breach of fiduciary duty, or by reason of violation of a law or regulation, cease-and-desist order, imposed condition, or written agreement).

evidence over the objection of counsel that the evidence does not fall directly within the scope of the issues raised by a notice or answer. If the ALJ determines that the evidence is likely to assist in adjudicating the merits of the action and does not unfairly prejudice the opposing party's action or defense, the ALJ may admit the evidence.

The proposal is intended to expedite administrative hearings by precluding the need to amend notices and answers and to eliminate unnecessary delay. The agencies do not believe the proposal represents a significant change in practice because the ALJs, under the current Uniform Rules, grant leave to amend a notice or answer freely.

Section ____.24 Scope of document discovery.

The proposal clarifies the prohibition on the use of interrogatories in discovery and focuses the scope of document discovery.

The current Uniform Rules are silent on the use of interrogatories. The proposal expressly prohibits parties from using interrogatories. The agencies believe that discovery tools other than interrogatories are more efficient and less burdensome.

In the past, certain agencies have been burdened by overly broad document discovery requests. The proposal is intended to focus document discovery requests so that they are not unreasonable, oppressive, excessive in scope, or unduly burdensome to any of the parties.

The proposal continues to limit document discovery to documents that have material relevance. However, the proposal clarifies that a request should be considered unreasonable, oppressive, excessive in scope, or unduly burdensome if, among other things, it fails to include justifiable limitations on the time period covered and the geographic locations to be searched, the time provided to respond in the request is inadequate, or the request calls for copies of documents to be delivered to the requesting party and fails to include the requestor's written agreement to pay in advance for the copying, in accordance with § ____.25. Under the proposal, the scope of permissible document discovery is not as broad as that allowed under Federal Rule of Civil Procedure 26(b) (28 U.S.C. app.). Historically, given the specialized nature of enforcement proceedings in regulated industries, discovery in administrative proceedings has not been as expansive as it is in civil litigation.

The Uniform Rules do not address how parties should obtain materials that are publicly available from the agencies. Materials that are either publicly distributed by the agencies on request, available for public inspection and copying at the agencies, or available by request under the Freedom of Information Act (5 U.S.C. 552) (FOIA) should be obtained pursuant to those procedures before resorting to discovery mechanisms under the Uniform Rules.

Section ____.25 Request for document discovery from parties.

The proposal revises the document discovery provisions to reduce unnecessary burden and to expedite the discovery process.

The current Uniform Rules require a party to respond to document requests: (1) By producing documents as they are kept in the course of business; and (2) by organizing them to correspond with the categories in the document request. The agencies believe that these two requirements may sometimes conflict. Proposed paragraph (a) resolves this potential for conflict by permitting a party either to produce documents as they are kept or to organize them to correspond to the categories in the request.

Proposed paragraph (b) permits parties to require payment in advance for the costs of copying and shipping requested documents. The current Uniform Rules do not contain a like authorization. The agencies, on occasion, have faced difficulties in obtaining payments after having produced copies of requested documents.

Proposed paragraph (e) reduces the logistical burdens placed on the parties by voluminous document requests. Under the current rule, § ____.25(e) could be read to require a party to produce a privilege list that identifies each individual document withheld on a claim of privilege. Under the proposal, when similar documents that are protected by the deliberative process, attorney-client, or attorney-work-product privilege are voluminous, a party may identify them by category. However, the agencies intend the ALJ to retain discretion to determine when it is not appropriate for a party to identify documents by category or when a party's category description lacks adequate detail.

Proposed paragraph (g) clarifies that documents subject to an assertion of privilege may not be released or disclosed to the requesting party until the issue of privilege has been finally resolved. The current Uniform Rules are silent on this matter, with the result that, in past proceedings, some documents have been released prior to the ultimate determination of whether the documents are privileged. Specifically, the proposal amends the current Uniform Rules by providing that, even when an ALJ rules that the documents in question are not privileged, the documents cannot be released to the requesting party if the party asserting the privilege has stated an intention to file a motion for interlocutory review of that ruling. In such a case, the documents in question cannot be released until the motion for interlocutory review is decided.

The proposal also makes a technical change that is intended to conform proposed § ____.25(g) with proposed § ____.24(b). Proposed § ____.25(g) uses the same language as proposed § ____.24(b) to describe the standard for denial or modification of discovery requests, e.g., ''[a request that] calls for irrelevant material, is unreasonable, oppressive, excessive in scope, unduly burdensome, repetitive of previous requests, or seeks to obtain privileged documents.'' The agencies intend this change to make clear that there is no difference in the standards prescribed by § ____.24 and § ____.25.

The proposal makes an additional technical change to § ____.25 that is intended to identify more precisely motions to stop document discovery. The current Uniform Rules use the phrase ''motion to revoke'' discovery. The proposal changes the word ''revoke'' to ''strike'' because the agencies believe it more accurately describes a motion to stop document discovery.

Section ____.27 Deposition of witness unavailable for hearing.

Under the current Uniform Rules, some confusion has arisen as to whether service of a deposition subpoena on a witness who is unavailable for a hearing is satisfied by service on an authorized representative of the witness. The current Uniform Rules do not specifically address this issue. Under the proposal, a party may serve a deposition subpoena on a witness who is unavailable by serving the subpoena on the witness's authorized representative.

Section ____.33 Public hearings.

Under the current Uniform Rules, it is unclear whether a party must file a motion for a private hearing with the agency head or the ALJ. The Uniform Rules provide that a party requesting a private hearing may file with the agency head, but also states that public hearing requests are governed by § ____.23, which requires parties to file motions with the ALJ.

The proposal revises this section to specify that a party must file a motion for a private hearing with the agency head and not the ALJ, since the agency has sole discretion to rule on a motion for a private hearing. The proposal also clarifies that a party must serve the ALJ with a copy of a motion for a private hearing.

Section ____.34 Hearing subpoenas.

The proposal revises the treatment of hearing subpoenas to: (1) Ensure that each party receives a copy of each subpoena issued and each motion to quash a subpoena; and (2) give each party the ability to move to quash any hearing subpoena.

The current Uniform Rules do not specifically require that a party inform all other parties when a subpoena to a non-party is issued. The proposal requires that, after a hearing subpoena is issued by the ALJ, the party that applied for the subpoena must serve a copy of it on each party. Any party may move to quash any hearing subpoena and must serve the motion on each other party. The changes to this section are intended to keep all parties informed of the issuance of a hearing subpoena and to permit any party to move to quash any hearing subpoena once it has been issued.

Section ____.35 Conduct of hearings.

The proposal limits the number of counsel permitted to examine a witness, clarifies that hearing transcripts may be obtained only from the court reporter, and clarifies that the same method of service must be used to notify each party that a transcript has been filed. The current Uniform Rules are silent on these issues.

The agencies have found that witnesses are sometimes subject to cross-examination by multiple counsel representing a single party. When more than one attorney conducts a cross-examination, the cross-examination often becomes repetitive and unreasonably stressful and intimidating for the witness.

The proposal conforms with the local rules of many courts by permitting only one counsel for each party to examine a witness, except in the case of extensive direct examination. In the case of extensive direct examination, the ALJ may permit more than one counsel for the party presenting the witness to conduct the examination. In addition, a party may have a different counsel conduct the direct and re-direct examination of a witness or the cross and re-cross examination of a witness.

The proposal also clarifies that parties may obtain copies of a hearing transcript only from the reporter. This change ensures that each party bears the cost of its own copy of the transcript.

Finally, as discussed below, the proposal removes certain requirements in § ____.35(b) and inserts them at proposed § ____.37(a).

Section ____.37 Post hearing filings.

The proposal changes the title of this section from ''Proposed findings and conclusions'' to ''Post hearing filings'' in order to describe more accurately the content of the section.

Under the current Uniform Rules, § ____.35(b) requires the ALJ to serve each party with notice that the certified transcript of the hearing, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed. The proposal moves this provision to proposed § ____.37(a). The agencies believe that the provision more directly relates to § ____.37(a) because § ____.37 uses the ALJ's notice as the start date for a time limit. Under § ____.37, the party is permitted 30 days, after the party is served with the ALJ's notice, to file proposed findings of fact, proposed conclusions of law, and a proposed order.

In addition, under the current Uniform Rules, there is no express requirement that notice of the ALJ's filing of the certified transcript be served on each party by the same method. The proposal requires that the same method of service be used for each party to serve notice that a transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed. This change eliminates the inequities that can arise when different methods of service are used.

The current Uniform Rules suggest, but do not explicitly state, that the ALJ may order a longer period of time for parties to file proposed findings of fact and conclusions of law. It provides that parties must file within 30 days ''unless otherwise ordered by the administrative law judge.''

The proposal clearly states that the ALJ may, when appropriate, permit parties more than the allotted 30 days to file proposed findings of fact, proposed conclusions of law, and a proposed order.

Section ____.38 Recommended decision and filing of record.

Under the current Uniform Rules, when the ALJ files the record with the agency head, an index of the record is not always provided to the agency head. As a result, if a document is missing from the record, the agency head has no means of knowing that the document exists. The proposal requires that an index be filed with the record. The proposal also reorganizes this section to improve its clarity.

E. Section-by-Section Summary and Discussion of Proposed Amendments to the Local Rules of Each Agency

1. Proposed Amendments to the OCC Local Rules

Section 19.100 Filing Documents.

The proposal changes the heading of this section from ''Scope'' to ''Filing documents'', which more accurately describes the content of the section.

The proposal clarifies that ALJs will file the administrative record of a removal or prohibition case with the Board of Governors. The current OCC Local Rules state that all materials should be filed with the Hearing Clerk of the OCC and provide for no exception for removal and prohibition cases. Unlike all other OCC administrative actions, which are decided by the Comptroller, removal and prohibition cases are decided by the Board of Governors. ALJs, therefore, file hearing records with the Board of Governors in removal and prohibition cases.

Section 19.112 Informal Hearing.

The proposal changes § 19.112(b) to conform the informal hearing initiation provisions so that the same OCC official who sets the date, time, and place for an informal hearing also appoints the presiding officer. Under the current OCC Local Rules, the appropriate District Administrator or the Deputy Comptroller for Multinational Banking fixes the date, time, and place for a hearing, but the Comptroller appoints the presiding officer.

The OCC believes that it is more efficient for the same OCC official who sets the date, time, and place for a hearing to appoint the presiding officer. Under the proposal, the District Deputy Comptroller or Administrator, the Deputy Comptroller for Multinational, or the Deputy Comptroller or Director for Special Supervision, whoever is appropriate, fixes the date, time, and place for the hearing and chooses the presiding officer.

Proposed paragraph (c) makes clear that, if a petitioner waives the opportunity to present an oral argument at a hearing, the OCC may file written response submissions with the presiding officer no later than the date on which the hearing was to be held. The proposal also requires a petitioner who chooses to waive the opportunity to present oral argument to submit that waiver at the same time the petitioner

requests a hearing. The current OCC Local Rules are silent on these issues.

The OCC believes that the agency would be unfairly prejudiced if it is not given advance notice of whether the party will proceed with an oral argument or solely on written submissions.

Proposed paragraph (d) clarifies that, when a petitioner does not waive an oral hearing, both the petitioner and the OCC must make all filings of affidavits, memoranda, or other written material with the presiding officer at least ten days prior to the hearing or within a shorter time period if permitted by the presiding officer. Current § 19.112(d) could be interpreted to require only the petitioner to make all filings at least ten days prior to the hearing. The proposal makes clear that the requirement applies to both the petitioner and the OCC.

Unlike proposed paragraph (c), which permits the OCC an additional ten days to respond to the petitioner's written submissions, proposed paragraph (d) requires the OCC to file written submissions at the same time as the petitioner must file submissions. Under these proposed OCC Local Rules, the petitioner has the unilateral ability to waive an oral hearing. Therefore, the OCC believes that the OCC should have an additional ten days to file its submissions when a petitioner chooses to waive a hearing. The OCC will need to prepare its submissions as a response to the petitioner's submissions because the OCC will not have an opportunity to give oral argument. This system parallels the submission of briefs in appellate argument.

Section 19.113 Recommended and Final Decisions.

Under the OCC Local Rules, the Comptroller must issue a final decision in a removal, suspension, or prohibition case, within 60 days of the hearing or within 60 days of receiving the petitioner's written submission. Section 8(g)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1818(g)(3)) requires the Comptroller, within 60 days of the hearing, to notify a petitioner of the Comptroller's final decision. Section 8(g)(3) does not state that the Comptroller may use the date of receipt of the petitioner's written submission as the start date of the 60-day time limitation.

The proposal clarifies that the OCC Local Rules conform to section 8(g)(3) by requiring the Comptroller to issue a final decision on a removal, suspension, or prohibition case within 60 days of the hearing and regardless of when the Comptroller received the petitioner's written submission.

To ensure that the Comptroller is able to meet this 60-day deadline, the proposal imposes a clear time deadline on the presiding officer to issue a recommended decision. The current OCC Local Rules do not contain a deadline for the presiding officer. The proposal requires the presiding officer to issue a recommended decision within 20 days from the hearing.

Section 19.160 Scope.

The proposal conforms this provision to a change the OCC proposed to make to 12 CFR 5.50(f)(5). *See* 59 FR 61034 (November 29, 1994). Both proposals clarify the time permitted the OCC to communicate its disapproval of a change-in-control notice to the proposed acquiring party (filer). Current § 19.160 suggests that the OCC must give written notice to a filer of the OCC's disapproval within three days of the decision. Because first class mail can take three days, the OCC would have little time to issue a notice before the regulatory deadline expired if the rule were interpreted to mean that written notice must be received within three days of a decision.

The proposal requires the OCC to mail the written notice within three days of making a disapproval decision.

Section 19.161 Notice of Disapproval and Hearing Initiation.

The proposal changes the title of this section from ''Hearing request and answer'' to ''Notice of disapproval and hearing initiation'' in order to describe more accurately the content of the section.

The proposal changes the initiation procedures for change-in-control proceedings. Under the current OCC Local Rules, the OCC's notice of disapproval is both a licensing communication and the initial pleading in the action. With the proposal, the OCC intends to make the procedure clearer by severing these functions.

Under the proposal, the notice of disapproval no longer serves as the OCC's initial pleading. Instead, when the Comptroller receives a notice of a request for a hearing in response to a notice of disapproval, the Comptroller will issue a hearing order. The hearing order serves as the OCC's pleading document and states the legal authority for the proceeding, the OCC's jurisdiction over the proceeding, and the matters of fact or law upon which the disapproval is based. The hearing order also states that a filer who seeks a hearing must file an answer to the hearing order with the Office of Financial Institution Adjudication (OFIA) within 20 days after service of the order on the filer.

The proposal also makes a technical correction by removing the phrase ''in civil money penalty proceedings'' from the title of former paragraph (c)(2).

Section 19.170 Discovery Depositions.

Under the current OCC Local Rules, it is unclear which methods may be used to record deposition testimony and under what conditions the parties must agree to have the court recorder use a particular method.

The proposal allows a party to have the court reporter record deposition testimony with a stenotype machine or an electronic sound recording device. The proposal also allows a party, for good cause and with leave of the ALJ or upon agreement of the parties, to have the court reporter use any other method to record the deposition testimony.

The proposal specifies that a written record of the witness's testimony must be made unless the parties agree otherwise. The proposal is intended to eliminate any confusion concerning when the parties must agree to transcribe the proceedings. The proposal also expressly provides that all parties are entitled to receive a transcript of the witness's testimony.

The proposal also requires that the party taking the deposition bear the cost of the recording and the transcription of that recording. The current OCC Local Rules are silent on who bears the cost of recording and transcription. The proposed change is the common practice in agency proceedings.

Section 19.171 Deposition Subpoenas.

The proposal changes the methods of service of a subpoena that a party may use for discovery depositions. The current rule only permits a party to serve the person named in the subpoena or that person's counsel by personal service, service by certified mail, or service by overnight delivery service.

The proposal adds to these methods of service the methods used in the Uniform Rules, § 19.11(c)(2) and (d). The Uniform Rules permit the following additional methods of service: service by delivery to an agent, by delivery to a person of suitable age and discretion at the subpoenaed person's residence (and, as amended by the proposal, at the subpoenaed person's place of work), by registered or certified mail to the person's last known address, or in such other manner as is reasonably calculated to give actual notice. The OCC believes the current rule is too narrow and that making additional methods of service available will reduce burden.

Section 19.184 Service of Subpoena and Payment of Witness Fees.

The proposal changes the methods of service of a subpoena that may be used in formal investigations under subpart J. The current rule only permits personal service or service by certified mail.

The proposal adopts the methods of service used in the Uniform Rules, § 19.11(c)(2) and (d). The Uniform Rules permit additional methods of service. They are service by delivery to an agent, by delivery to a person of suitable age and discretion at the subpoenaed person's residence (and, as amended by the proposal, at the subpoenaed person's place of work), by registered or certified mail to the person's last known address, or in such other manner as is reasonably calculated to give actual notice. The OCC believes the current rule is too narrow and that making additional methods of service available will reduce burden.

2. Proposed Amendments to the OTS Local Rules

Section 509.102 Discovery.

The OTS proposes to revise its local rule governing the service of discovery deposition subpoenas. The OTS would amend § 509.102(g)(2) to permit parties to serve deposition subpoenas by the methods listed in proposed Uniform Rule § ____.11(d). The current rule permits service by personal service, certified mail, or overnight delivery service. As noted above, proposed Uniform Rule § ____.11(d) would permit service by personal service, by delivery to an agent, by delivery to a person of suitable age and discretion at the subpoenaed person's residence or place of work, by registered or certified mail to the person's last known address, or in such other manner as is reasonably calculated to give actual notice.

The proposed rule also clarifies that subpoenas may be served on the person named in the subpoena *or* on that person's counsel. The current rule appears to require service of a copy of the subpoena on counsel, even when service is made on the person named in the subpoena. This proposed change would conform the OTS local rule to OCC local rule § 19.171 in this regard.

Section 509.104 Additional Procedures.

Under proposed Uniform Rule § ____.38(b), the ALJ is required to file an index of the record when he or she certifies the record to the Director. OTS local rule § 509.104(h) duplicates the proposed Uniform Rule and would be deleted.

F. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC, Board of Governors, FDIC, OTS, and NCUA, hereby independently certify that this joint proposed rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

This joint proposed rule improves the Uniform Rules of Practice and Procedure required by section 916 of FIRREA and facilitates the orderly determination of administrative proceedings. The agencies already have in place uniform rules of practice and procedure as well as Local Rules. The changes in this joint proposed rule are primarily clarifications and do not impose additional burdens on regulated institutions.

G. OCC AND OTS Executive Order 12866 Statement

The OCC and the OTS have independently determined that this joint proposed rule is not a significant regulatory action as defined in Executive Order 12866.

H. OCC and OTS Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) (signed into law on March 22, 1995) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this final rule is limited in application to procedural amendments to the rules of administrative practice before the OCC and OTS. The OCC and OTS have therefore determined that the final rule will not result in expenditures by State, local, or tribal governments or by the private sector of more than $100 million. Accordingly, the OCC and OTS have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

I. NCUA Executive Order 12612 Statement

This joint proposed rule, like the current part 747 it is replacing, will apply to all Federally insured credit unions. The NCUA Board, pursuant to Executive Order 12612, has determined, however, that this joint proposed rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. Further, this joint proposed rule will not preempt provisions of state law or regulations.

Text of Proposed Uniform Rules (All Agencies)

The text of the proposed amendments to the Uniform Rules appears below:

Subpart A—Uniform Rules of Practice and Procedure

1. In § ____.1, paragraph (e)(9) is amended by removing ''and'' after the semicolon; and new paragraphs (e)(____) and (e)(____)[1] are added to read as follows:

§ ____.1 Scope.

* * * * *

(e) * * *

(____) Section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) or any order or regulation issued thereunder; and

(____) Any provision of law referenced in 31 U.S.C. 5321 or any order or regulation issued thereunder; and

* * * * *

2. In § ____.6, paragraph (a)(3) is revised to read as follows:

§ ____.6 Appearance and practice in adjudicatory proceedings.

(a) * * *

(3) *Notice of appearance.* Any individual acting as counsel on behalf of a party, including the [Agency head], shall file a notice of appearance with OFIA at or before the time that individual submits papers or otherwise appears on behalf of a party in the adjudicatory proceeding. The notice of appearance must include a written declaration that the individual is currently qualified as provided in paragraph (a)(1) or (a)(2) of this section and is authorized to represent the particular party. By filing a notice of appearance on behalf of a party in an adjudicatory proceeding, the counsel agrees and represents that he or she is authorized to accept service on behalf of the represented party and that, in the event of withdrawal from representation, he or she will, if

[1] The new paragraphs are not identified by number in the proposal because the number of paragraphs in each agency's scope section differs depending on the agency's particular statutory authority.

required by the administrative law judge, continue to accept service of process until new counsel has filed a notice of appearance or until the represented party indicates that he or she will proceed on a *pro se* basis.

* * * * *

3. In § ____.8, paragraph (b) is revised to read as follows:

§ ____.8 Conflicts of interest.

* * * * *

(b) *Certification and waiver.* If any person appearing as counsel represents two or more parties to an adjudicatory proceeding or also represents a non-party on a matter relevant to an issue in the proceeding, counsel must certify in writing at the time of filing the notice of appearance required by § ____.6(a):

(1) That the counsel has personally and fully discussed the possibility of conflicts of interest with each such party or non-party; and

(2) That each such party or non-party waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.

4. In § ____.11, paragraphs (c)(2) and (d) are revised to read as follows:

§ ____.11 Service of papers.

* * * * *

(c) * * *

(2) If a party has not appeared in the proceeding in accordance with § ____.6, the [Agency head] or the administrative law judge shall make service by any of the following methods:

(i) By personal service;

(ii) By delivery to a person of suitable age and discretion at the party's residence or place of work;

(iii) By registered or certified mail addressed to the party's last known address; or

(iv) By any other method reasonably calculated to give actual notice.

(d) *Subpoenas.* Service of a subpoenas may be made by personal service, by delivery to an agent, by delivery to a person of suitable age and discretion at the subpoenaed person's residence or place of work, by registered or certified mail addressed to the person's last known address, or in such other manner as is reasonably calculated to give actual notice.

* * * * *

5. In § ____.12, paragraphs (a) and (c)(1), (c)(2), and (c)(3) are revised to read as follows:

§ ____.12 Construction of time limits.

(a) *General rule.* In computing any period of time prescribed by this subpart, the date of the act or event that commences the designated period of time is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday. When the last day is a Saturday, Sunday, or Federal holiday, the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays are included in the computation of time. However, when the time period within which an act is to be performed is ten days or less, not including any additional time allowed for service by mail, delivery service, or electronic media transmission in § ____.12(c), intermediate Saturdays, Sundays, and Federal holidays are not included.

* * * * *

(c) * * *

(1) If service is made by first class, registered, or certified mail, add three calendar days to the prescribed period;

(2) If service is made by express mail or overnight delivery service, add one calendar day to the prescribed period; or

(3) If service is made by electronic media transmission, add one calendar day to the prescribed period, unless otherwise determined by the [Agency head] or the administrative law judge in the case of filing, or by agreement among the parties in the case of service.

6. Section ____.20 is revised to read as follows:

§ ____.20 Amended pleadings.

(a) *Amendments.* The notice or answer may be amended or supplemented at any stage of the proceeding. The respondent must answer an amended notice within the time remaining for the respondent's answer to the original notice, or within ten days after service of the amended notice, whichever period is longer, unless the [Agency head] or administrative law judge orders otherwise for good cause.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, they will be treated in all respects as if they had been raised in the notice or answer, and no formal amendments are required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the administrative law judge may admit the evidence when admission is likely to assist in adjudicating the merits of the action and the objecting party fails to satisfy the administrative law judge that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The administrative law judge may grant a continuance to enable the objecting party to meet such evidence.

7. In § ____.24, paragraphs (a)(1), (a)(2), and (b) are revised and paragraph (a)(3) is added to read as follows:

§ ____.24 Scope of document discovery.

(a) *Limits on discovery.* (1) Subject to the limitations set out in paragraphs (b), (c), and (d) of this section, a party to a proceeding under this subpart may obtain document discovery by serving a written request to produce documents. For purposes of a request to produce documents, the term ''documents'' may be defined to include drawings, graphs, charts, photographs, recordings, data stored in electronic form, and other data compilations from which information can be obtained, or translated, if necessary, by the parties through detection devices into reasonably usable form, as well as written material of all kinds.

(2) Discovery by use of deposition is governed by subpart [insert appropriate subpart] of this part.

(3) Discovery by use of interrogatories is not permitted.

(b) *Relevance.* A party may obtain document discovery regarding any matter, not privileged, that has material relevance to the merits of the pending action. Any request to produce documents that calls for irrelevant material, that is unreasonable, oppressive, excessive in scope, unduly burdensome, or repetitive of previous requests, or that seeks to obtain privileged documents will be denied or modified. A request is unreasonable, oppressive, excessive in scope or unduly burdensome if, among other things, it fails to include justifiable limitations on the time period covered and the geographic locations to be searched, the time provided to respond in the request is inadequate, or the request calls for copies of documents to be delivered to the requesting party and fails to include the requestor's written agreement to pay in advance for the copying, in accordance with § ____.25.

* * * * *

8. In § ____.25, paragraphs (a), (b), (e), and (g) are revised to read as follows:

§ ____.25 Request for document discovery from parties.

(a) *General rule.* Any party may serve on any other party a request to produce for inspection any discoverable documents that are in the possession, custody, or control of the party upon whom the request is served. The request must identify the documents to be produced either by individual item or by category, and must describe each

item and category with reasonable particularity. Documents must be produced as they are kept in the usual course of business or must be organized to correspond with the categories in the request.

(b) *Production or copying.* The request must specify a reasonable time, place, and manner for production and performing any related acts. In lieu of inspecting the documents, the requesting party may specify that all or some of the responsive documents be copied and the copies delivered to the requesting party. If copying of fewer than 250 pages is requested, the party to whom the request is addressed shall bear the cost of copying and shipping charges. If a party requests 250 pages or more of copying, the requesting party shall pay for the copying and shipping charges. Copying charges are the current per-page copying rate imposed by part ____ of this chapter implementing the Freedom of Information Act (5 U.S.C. 552a). The party to whom the request is addressed may require payment in advance before producing the documents.

* * * * *

(e) *Privilege.* At the time other documents are produced, the producing party must reasonably identify all documents withheld on the grounds of privilege and must produce a statement of the basis for the assertion of privilege. When similar documents that are protected by deliberative process, attorney-work-product, or attorney-client privilege are voluminous, these documents may be identified by category instead of by individual document. The administrative law judge retains discretion to determine when the identification by category is insufficient.

* * * * *

(g) *Ruling on motions.* After the time for filing responses pursuant to this section has expired, the administrative law judge shall rule promptly on all motions filed pursuant to this section. If the administrative law judge determines that a discovery request, or any of its terms, calls for irrelevant material, is unreasonable, oppressive, excessive in scope, unduly burdensome, or repetitive of previous requests, or seeks to obtain privileged documents, he or she may deny or modify the request, and may issue appropriate protective orders, upon such conditions as justice may require. The pendency of a motion to strike or limit discovery or to compel production is not a basis for staying or continuing the proceeding, unless otherwise ordered by the administrative law judge. Notwithstanding any other provision in this part, the administrative law judge may not release, or order a party to produce, documents withheld on grounds of privilege if the party has stated its intention to file a timely motion for interlocutory review of the administrative law judge's order to produce the documents, and until the motion for interlocutory review has been decided.

* * * * *

9. In § ____.27, paragraph (a)(4) is revised to read as follows:

§ ____.27 Deposition of witness unavailable for hearing.

(a) * * *

(4) The party obtaining a deposition subpoena must serve the subpoena on the witness or an authorized representative of the witness and a copy of the subpoena on each party. Unless the administrative law judge orders otherwise, a party may not take a deposition under this section on fewer than ten days notice to the witness and all parties. A party may serve a deposition subpoena in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or as otherwise permitted by law.

* * * * *

10. In § ____.33, paragraph (a) is revised to read as follows:

§ ____.33 Public hearings.

(a) *General rule.* All hearings shall be open to the public, unless the [Agency head], in [Agency Head's or its] discretion, determines that holding an open hearing would be contrary to the public interest. Within 20 days of service of the notice or, in the case of change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)), within 20 days from service of the hearing order, any respondent may file with the [Agency head] a request for a private hearing, and any party may file a reply to such a request. A party must serve on the administrative law judge a copy of any request or reply the party files with the agency head. The form of, and procedure for, these requests and replies are governed by § ____.23. A party's failure to file a request or a reply constitutes a waiver of any objections regarding whether the hearing will be public or private.

* * * * *

11. In § ____.34, paragraphs (a) and (b)(1) are revised to read as follows:

§ ____.34 Hearing subpoenas.

(a) *Issuance.* (1) Upon application of a party showing general relevance and reasonableness of scope of the testimony or other evidence sought, the administrative law judge may issue a subpoena or a subpoena duces tecum requiring the attendance of a witness at the hearing or the production of documentary or physical evidence at the hearing. The application for a hearing subpoena must also contain a proposed subpoena specifying the attendance of a witness or the production of evidence from any state, territory, or possession of the United States, the District of Columbia, or as otherwise provided by law at any designated place where the hearing is being conducted. The party making the application shall serve a copy of the application and the proposed subpoena on every other party.

(2) A party may apply for a hearing subpoena at any time before the commencement of a hearing. During a hearing, a party may make an application for a subpoena orally on the record before the administrative law judge.

(3) The administrative law judge shall promptly issue any hearing subpoena requested pursuant to this section. If the administrative law judge determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon any conditions consistent with this subpart. Upon issuance by the administrative law judge, the party making the application shall serve the subpoena on the person named in the subpoena and on each party.

(b) *Motion to quash or modify.* (1) Any person to whom a hearing subpoena is directed or any party may file a motion to quash or modify the subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant must serve the motion on each party and on the person named in the subpoena. Any party may respond to the motion within ten days of service of the motion.

* * * * *

12. In § ____.35, paragraph (a)(3) is redesignated as paragraph (a)(4), a new paragraph (a)(3) is added, and paragraph (b) is revised to read as follows:

§ ____.35 Conduct of hearings.

(a) * * *

(3) Examination of witnesses. Only one counsel for each party may conduct an examination of a witness, except that

in the case of extensive direct examination, the administrative law judge may permit more than one counsel for the party presenting the witness to conduct the examination. A party may have one counsel conduct the direct examination and another counsel conduct re-direct examination of a witness, or may have one counsel conduct the cross examination of a witness and another counsel conduct the re-cross examination of a witness.

* * * * *

(b) *Transcript.* The hearing must be recorded and transcribed. The reporter will make the transcript available to any party upon payment by that party to the reporter of the cost of the transcript. The administrative law judge may order the record corrected, either upon motion to correct, upon stipulation of the parties, or following notice to the parties upon the administrative law judge's own motion.

13. In § ____.37, the section heading and paragraph (a)(1) are revised to read as follows:

§ ____.37 Post hearing filings.

(a) *Proposed findings and conclusions and supporting briefs.* (1) Using the same method of service for each party, the administrative law judge shall serve notice upon each party, that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed. Any party may file with the administrative law judge proposed findings of fact, proposed conclusions of law, and a proposed order within 30 days following service of this notice by the administrative law judge, unless the administrative law judge orders a longer period.

* * * * *

14. Section ____.38 is revised to read as follows:

§ ____.38 Recommended decision and filing of record.

(a) *Filing of recommended decision and record.* Within 45 days after expiration of the time allowed for filing reply briefs under § ____.37(b), the administrative law judge shall file with and certify to the [Agency head] for decision the record of the proceeding. The record must include the administrative law judge's recommended decision, recommended findings of fact, recommended conclusions of law, and proposed order; all prehearing and hearing transcripts, exhibits, and rulings; and the motions, briefs, memoranda, and other supporting papers filed in connection with the hearing. The administrative law judge shall serve upon each party the recommended decision, findings, conclusions, and proposed order.

(b) *Filing of index.* At the same time the administrative law judge files with and certifies to the [Agency head] for final determination the record of the proceeding, the administrative law judge shall furnish to the [Agency head] a certified index of the entire record of the proceeding. The certified index shall include, at a minimum, an entry for each paper, document or motion filed with the administrative law judge in the proceeding, the date of the filing, and the identity of the filer. The certified index shall also include an exhibit index containing, at a minimum, an entry consisting of exhibit number and title or description for: Each exhibit introduced and admitted into evidence at the hearing; each exhibit introduced but not admitted into evidence at the hearing; each exhibit introduced and admitted into evidence after the completion of the hearing; and each exhibit introduced but not admitted into evidence after the completion of the hearing.

Proposed Adoption of Uniform Rules

The agency-specific adoptions of the amendments to the Uniform Rules, which appear at the end of the common preamble, appear below:

OFFICE OF THE COMPTROLLER OF THE CURRENCY

12 CFR Part 19

List of Subjects in 12 CFR Part 19

Administrative practice and procedure, Crime, Investigations, National banks, Penalties, Securities.

Authority and Issuance

For the reasons set out in the preamble, part 19 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 19—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 19 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1817, 1818, 1820, 1831o, 1972, 3102, 3108(a), 3909, and 4717; 15 U.S.C. 78 (h) and (i), 78o–4(c), 78o–5, 78q–1, 78u, 78u–2, 78u–3, and 78w; 31 U.S.C. 330 and 5321; and 42 U.S.C. 4012a.

Subpart A—[Amended]

2. Subpart A of part 19 is amended as set forth at the end of the common preamble.

Subpart B—[Amended]

3. Section 19.100 is revised to read as follows:

§ 19.100 Filing documents.

All materials required to be filed with or referred to the Comptroller or the administrative law judge in any proceeding under this part must be filed with the Hearing Clerk, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. Filings to be made with the Hearing Clerk include the notice and answer; motions and responses to motions; briefs; the record filed by the administrative law judge after the issuance of a recommended decision; the recommended decision filed by the administrative law judge following a motion for summary disposition (except that in removal and prohibition cases, the administrative law judge will file the record and the recommended decision with the Board of Governors of the Federal Reserve System); referrals by the administrative law judge of motions for interlocutory review; exceptions and requests for oral argument; and any other papers required to be filed with the Comptroller or the administrative law judge under this part.

Subpart C—[Amended]

4. In § 19.112, paragraphs (a), (b), (c) and (d)(3)(i) are revised to read as follows:

§ 19.112 Informal hearing.

(a) *Issuance of hearing order.* After receipt of a request for hearing, the District Deputy Comptroller or Administrator, the Deputy Comptroller for Multinational Banking, or the Deputy Comptroller or Director for Special Supervision, whichever is appropriate, must notify the petitioner requesting the hearing, the OCC's Enforcement and Compliance Division, and the appropriate OCC District Counsel of the date, time, and place fixed for the hearing. The hearing must be scheduled to be held not later than 30 days from the date when a request for hearing is received unless the time is extended at the written request of the petitioner. The District Deputy Comptroller or Administrator, the Deputy Comptroller for Multinational Banking, or the Deputy Comptroller or Director for Special Supervision, whichever is appropriate, may extend the hearing date only for a specific period of time and must take appropriate action to ensure that the hearing is not unduly delayed.

(b) *Appointment of presiding officer.* The District Deputy Comptroller or

Administrator, Deputy Comptroller for Multinational Banking, or the Deputy Comptroller or Director for Special Supervision, as appropriate, must appoint one or more OCC employees as the presiding officer to conduct the hearing. The presiding officer(s) may not have been involved in the proceeding, a factually related proceeding, or the underlying enforcement action in a prosecutorial or investigative role.

(c) *Waiver of oral hearing.*—(1) *Petitioner.* When the petitioner requests a hearing, the petitioner may elect to have the matter determined by the presiding officer solely on the basis of written submissions by serving on the District Deputy Comptroller or Administrator, Deputy Comptroller for Multinational Banking, or the Deputy Comptroller or Director for Special Supervision, whichever is appropriate, and all parties, a signed document waiving the statutory right to appear and make oral argument. The petitioner must present the written submissions to the presiding officer, and serve the other parties, not later than ten days prior to the date fixed for the hearing, or within such shorter time period as the presiding officer may permit.

(2) *OCC.* The OCC may respond to the petitioner's submissions by presenting the hearing officer with a written response, and by serving the other parties, not later than the date fixed for the hearing, or within such other time period as the presiding officer may require.

(d) * * *

(3) *Presentation.* (i) The OCC may appear and the petitioner may appear personally or through counsel at the hearing to present relevant written materials and oral argument. Except as permitted in paragraph (c) of this section, each party, including the OCC, must file a copy of any affidavit, memorandum, or other written material to be presented at the hearing with the presiding officer and must serve the other parties not later than ten days prior to the hearing or within such shorter time period as permitted by the presiding officer.

* * * * *

5. In § 19.113, paragraphs (a) and (b) are revised, paragraphs (c), (d), and (e) are redesignated as paragraphs (d), (e), and (f), respectively, and new paragraph (c) is added, to read as follows:

§ 19.113 Recommended and final decisions.

(a) The presiding officer must issue a recommended decision to the Comptroller within 20 days from the hearing or, when the petitioner waived an oral hearing, within 20 days from the date fixed for the hearing. The presiding officer must serve promptly a copy of the recommended decision on the parties to the proceeding. The decision must include a summary of the facts and arguments of the parties.

(b) Each party may, within ten days of being served with the presiding officer's recommended decision, submit to the Comptroller comments on the recommended decision.

(c) Within 60 days following the hearing or, when the petitioner waived an oral hearing within 60 days from the date fixed for the hearing, the Comptroller must notify the petitioner by registered mail as to whether the suspension or removal from office, and prohibition from participation in any manner in the affairs of the bank, will be affirmed, terminated, or modified. The Comptroller's decision must include a statement of reasons supporting the decision. The Comptroller's decision is a final and unappealable order.

* * * * *

Subpart H—[Amended]

§ 19.160 [Amended]

6. In § 19.160, paragraph (a) is amended in the second sentence by revising the phrase ''notify the acquiring party in writing'' to read ''mail a written notification to the proposed acquiring person''.

7. Section 19.161 is revised to read as follows:

§ 19.161 Notice of disapproval and hearing initiation.

(a) *Notice of disapproval.* The OCC's written disapproval of a proposed acquisition of control of a national bank must:

(1) Contain a statement of the basis for the disapproval; and

(2) Indicate that the filer may request a hearing.

(b) *Hearing request.* Following receipt of a notice of disapproval, a filer may request a hearing on the proposed acquisition. A hearing request must:

(1) Be in writing; and

(2) Be filed with the hearing clerk of the OCC within ten days after service on the filer of the notice of disapproval. If a filer fails to request a hearing with a timely written request, the notice of disapproval constitutes a final and unappealable order.

(c) *Hearing order.* Following receipt of a hearing request, the Comptroller issues, within 20 days, an order that sets forth:

(1) The legal authority for the proceeding and for the OCC's jurisdiction over the proceeding;

(2) The matters of fact or law upon which the disapproval is based; and

(3) The requirement for filing an answer to the hearing notice with OFIA within 20 days after service of the hearing order.

(d) *Answer.* An answer to a hearing order must specifically deny those portions of the order that are disputed. Those portions of the order that the filer does not specifically deny are deemed admitted by the filer. Any hearing under this subpart is limited to those portions of the order that are specifically denied.

(e) *Effect of failure to answer.* Failure of a filer to file an answer within 20 days after service of the hearing order constitutes a waiver of the filer's right to appear and contest the allegations in the hearing order. If a filer does not file a timely answer, enforcement counsel may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the administrative law judge shall file with the Comptroller a recommended decision containing the findings and the relief sought in the hearing order. Any final order issued by the Comptroller based upon a filer's failure to answer is deemed to be an order issued upon consent and is a final and unappealable order.

§ 19.162 [Removed]

8. Section 19.162 is removed.

Subpart I—[Amended]

9. In § 19.170, paragraph (d) is revised, paragraphs (e) and (f) are redesignated as paragraphs (f) and (g), respectively, and a new paragraph (e) is added to read as follows:

§ 19.170 Discovery depositions.

* * * * *

(d) *Conduct of the deposition.* The witness must be duly sworn, and each party will have the right to examine the witness with respect to all non-privileged, relevant, and material matters of which the witness has factual, direct, and personal knowledge. Objections to questions or exhibits must be in short form and must state the grounds for the objection. Failure to object to questions or exhibits is not a waiver except where the grounds for the objection might have been avoided if the objection had been timely presented.

(e) *Recording the testimony.*—(1) *Generally.* The party taking the deposition must have a certified court reporter record the witness's testimony:

(i) By stenotype machine or electronic sound recording device;

(ii) Upon agreement of the parties, by any other method; or

(iii) For good cause and with leave of the administrative law judge, by any other method.

(2) *Cost.* The party taking the deposition must bear the cost of the recording and transcribing the witness's testimony.

(3) *Transcript.* Unless the parties agree that a transcription is not necessary, the court reporter must provide a transcript of the witness's testimony to the party taking the deposition and must make copies of the transcript available to all parties upon payment of cost to the appropriate court reporting service.

* * * * *

10. In § 19.171, paragraph (b) is revised to read as follows:

§ 19.171 Deposition subpoenas.

* * * * *

(b) *Service.* The party requesting the subpoena must serve it on the person named therein, or on that person's counsel, by personal service, by delivery to an agent, by delivery to a person of suitable age and discretion at the subpoenaed person's residence or place of work, by registered or certified mail addressed to the person's last known address, or in such other manner as is reasonably calculated to give actual notice. The party serving the subpoena must file proof of service with the administrative law judge.

* * * * *

Subpart J—[Amended]

11. Section 19.184 is revised to read as follows:

§ 19.184 Service of subpoena and payment of witness fees.

Service of a subpoena may be made by personal service, by delivery to an agent, by delivery to a person of suitable age and discretion at the subpoenaed person's residence or place of work, by registered or certified mail addressed to the person's last known address, or in such other manner as is reasonably calculated to give actual notice. A witness who is subpoenaed will be paid the same expenses in the same manner as witnesses in the district courts of the United States. The expenses need not be tendered at the time a subpoena is served.

Dated: April 13, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

FEDERAL RESERVE SYSTEM

12 CFR Part 263

List of Subjects in 12 CFR Part 263

Administrative practice and procedure, Claims, Crime, Equal access to justice, Federal Reserve System, Lawyers, Penalties.

Authority and Issuance

For the reasons set out in the preamble, part 263 of chapter II of title 12 of the Code of Federal Regulations, is proposed to be amended as set forth below:

PART 263—RULES OF PRACTICE FOR HEARINGS

1. The authority citation for part 263 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 248, 324, 504, 505, 1817(j), 1818, 1828(c), 1847(b), 1847(d), 1884(b), 1972(2)(F), 3105, 3107, 3108, 3907, 3909, and 4717; 15 U.S.C. 21, 78o–4, 78o–5, and 78u–2; 31 U.S.C. 5321; 42 U.S.C. 4012a.

Subpart A—[Amended]

2. Subpart A of part 263 is amended as set forth at the end of the common preamble.

By order of the Board of Governors of the Federal Reserve System, May 9, 1995.

William W. Wiles,

Secretary of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

List of Subjects in 12 CFR Part 308

Administrative practice and procedure, Banks, banking, Claims, Equal access to justice, Ex parte communications, Hearing procedure, Penalties, State nonmember banks.

Authority and Issuance

For the reasons set out in the preamble, part 308 of chapter III of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 308—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 308 is revised to read as follows:

Authority: 5 U.S.C. 554–557; 12 U.S.C. 1815(e) 1817 (a) and (j), 1818, 1820, 1828(j), 1829, 1831l, 1972(2)(F), 3108, 3909, 3349, 4717; 15 U.S.C. 78l(h), 78m, 78n(a), 78n(c), 78n(d), 78n(f), 78o–4(c)(5), 78p, 78q, 78q–1, 78s, 78u–2; 31 U.S.C. 5321; 42 U.S.C. 4012a.

Subpart A—[Amended]

2. Subpart A of part 308 is amended as set forth at the end of the common preamble.

Dated: May 30, 1995.

Robert E. Feldman,

Acting Executive Secretary, Federal Deposit Insurance Corporation.

OFFICE OF THRIFT SUPERVISION

12 CFR Part 509

List of Subjects in 12 CFR Part 509

Administrative Practice and Procedure, Penalties.

Authority and Issuance

For the reasons set out in the preamble, part 509 of subchapter A of chapter V of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 509—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

1. The authority citation for part 509 is revised to read as follows:

Authority: 5 U.S.C. 554–557; 12 U.S.C. 1464, 1467, 1467a, 1468, 1817(j), 1818, 3349, 4717; 15 U.S.C. 78l, 78o–5, 78u–2; 31 U.S.C. 5321; 42 U.S.C. 4012a.

Subpart A—[Amended]

2. Subpart A of part 509 is amended as set forth at the end of the common preamble.

Subpart B—[Amended]

3. In § 509.102, paragraph (g)(2) is revised to read as follows:

§ 509.102 Discovery.

* * * * *

(g) * * *

(2) *Service.* The party requesting the subpoena shall serve it on the person named therein in accordance with § 509.11(d). The party serving the subpoena shall file proof of service with the administrative law judge.

* * * * *

§ 509.104 [Amended]

4. In § 509.104, paragraph (h) is removed and paragraph (i) is redesignated as paragraph (h).

Dated: May 26, 1995.

Jonathan L. Fiechter,

Acting Director, Office of Thrift Supervision.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 747

List of Subjects in 12 CFR Part 747

Administrative practice and procedure, Bank deposit insurance, Claims, Credit unions, Equal access to justice, Investigations, Lawyers, Penalties.

Authority and Issuance

For the reasons set out in the preamble, part 747 of chapter VII of title 12 of the Code of Federal Regulations, is proposed to be amended as set forth below:

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

1. The authority citation for part 747 is revised to read as follows:

Authority: 12 U.S.C. 1766, 1784, 1786, 1787; 42 U.S.C. 4012a.

Subpart A—[Amended]

2. Subpart A of part 747 is amended as set forth at the end of the common preamble.

Dated: June 9, 1995.

Becky Baker,

Secretary of the Board, National Credit Union Administration.

[FR Doc. 95–15059 Filed 6–22–95; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P; 7535–01–P

federal register

Friday
June 23, 1995

Part VI

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 261
Preservation of Antiquities; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 261

RIN 1076–AD10

Preservation of Antiquities

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is deleting from the Code of Federal Regulations those regulations that provide Bureau-specific procedures for the issuance and administration of archaeological permits under the Antiquities Act of 1906. These regulations have been superseded by regulations which cover BIA issuance and administration of such permits under the more comprehensive, Archaeological Resources Protection Act of 1979.

EFFECTIVE DATE: July 24, 1995.

FOR FURTHER INFORMATION CONTACT: Donald R. Sutherland on (202) 208–4791.

SUPPLEMENTARY INFORMATION: This rule deletion is parallel to uniform regulations in 43 CFR part 3, which set procedures for the issuance and administration of permits under the Antiquities Act of 1906 (16 U.S.C. 432). For example, the ''field officer in charge'' in 43 CFR part 3 becomes the ''Superintendent'' in 25 CFR part 261, and permits in part 261 are issued by the ''Departmental Consulting Archaeologist'' instead of the ''the Secretary having jurisdiction.''

Most of the permitting once done under the Antiquities Act is now done under the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa–470mm). The only use for a permit under the older act is for the excavation of archaeological sites that are less than 100 years old. These are not covered under the more recent act. On those rare occasions, the Bureau can follow the regulations in 43 CFR part 3.

No comments were received on the Proposed Rule, which was published November 29, 1994, in the **Federal Register**.

The Department of the Interior has determined that this rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

The Department of the Interior has determined that this rule is not a significant regulatory action under Executive Order 12866, and therefore will not require the approval of the Office of Management and Budget.

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as it removes obsolete federal procedures that, in turn, pertain solely to the issuance and administration of permits for archeological research.

In accordance with E.O. 12630, the Department has determined that this rule does not have significant takings implications.

The Department has determined that this rule does not have significant federalism effects. There are no information collection requirements in 25 CFR part 261.

The primary author of this document is Donald R. Sutherland, Archaeologist, Environmental Services Staff, Office of Trust Responsibilities, Bureau of Indian Affairs.

List of Subjects in 25 CFR Part 261

Historic preservation, Indians—lands.

For the reasons set out in the preamble, part 261 of Title 25, Chapter I of the Code of Federal Regulations is removed.

Dated: June 6, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–15406 Filed 6–22–95; 8:45 am]

BILLING CODE 4310–02–P

federal register

Friday
June 23, 1995

Part VII

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notices

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[KOO360–95–35420]

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Wadatkuht Band of the Northern Paiutes of the Honey Lake Valley, P.O. Box 541, Susanville, CA 96130, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA on January 26, 1995, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.9(a) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition.

Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

Dated: June 14, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–15404 Filed 6–22–95; 8:45 am]

BILLING CODE 4310–02–P

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Compact between the Sovereign Indian Nation of the Sac and Fox Tribe of the Mississippi in Iowa and the State of Iowa, which was executed on March 21, 1995.

DATES: This action is effective June 23, 1995.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4068.

Dated: May 18, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–15405 Filed 6–22–95; 8:45 am]

BILLING CODE 4310–02–P

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S. 349/P.L. 104–15

To reauthorize appropriations for the Navajo-Hopi Relocation Housing Program. (June 21, 1995; 109 Stat. 189; 1 page)

S. 441/P.L. 104–16

To reauthorize appropriations for certain programs under the Indian Child Protection and Family Violence Prevention Act, and for other purposes. (June 21, 1995; 109 Stat. 190; 1 page)

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