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[Two Sessions]

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May 21, 1996 at 9:00 am

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Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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

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

TENNESSEE VALLEY AUTHORITY

5 CFR Chapter LXIX

18 CFR Part 1300

Supplemental Standards of Ethical Conduct for Employees of the Tennessee Valley Authority

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for employees of TVA that supplement the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) issued by OGE by adding a requirement to obtain prior approval for outside employment. By this final rule, TVA also is repealing those sections of its existing conduct standards that are superseded by the new Standards as supplemented by this final rule and by the executive branch financial disclosure regulations inserting in their place a cross-reference to the new 5 CFR provisions, and reissuing those provisions in the TVA conduct standards which have not been superseded.

EFFECTIVE DATE: May 6, 1996.

FOR FURTHER INFORMATION CONTACT: William L. Osteen, Designated Agency Ethics Official, 423–632–4142, FAX 423–632–2422.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published new Standards of Ethical Conduct for Employees of the Executive Branch (Standards). See 57 FR 35006–35067, as corrected at 57 FR 48557 and 57 FR 52583, with additional grace period extensions at 59 FR 4779–4780 and 60 FR 6390–6391. Codified at 5 CFR part 2635, the new standards became effective on February 3, 1993.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations that are necessary to implement their respective ethics programs. TVA, with OGE's concurrence, has determined that the following supplemental rules, being codified in new chapter LXIX of 5 CFR, are necessary to the success of its ethics program. Simultaneously, TVA is repealing superseded provisions of 18 CFR part 1300, replacing those provisions with a section that provides cross-references to 5 CFR parts 2634 and 2635 and to TVA's new supplemental regulations, and reissuing existing provisions of 18 CFR part 1300 which have not been superseded.

II. Analysis of the Regulations

Section 7901.101 General

Section 7901.101 explains that these regulations supplement the executive branch-wide Standards and reminds TVA employees that they are subject to the Standards and to the executive branch-wide financial disclosure regulations, in addition to these regulations.

Section 7901.102 Prior Approval for Outside Employment

Where it is determined to be necessary or desirable for the purpose of administering its ethics program, 5 CFR 2635.803 authorizes an individual agency to issue supplemental regulations requiring agency employees to obtain prior approval before engaging in outside employment. TVA has for many years had a prior approval requirement, expressed partly in TVA conduct standards at 18 CFR 1300.735–13(b) and partly in uncodified instructions. Based on its findings that this requirement has helped ensure that employees' outside employment conforms to applicable statutes and regulations, TVA has determined that continuing this requirement is necessary for the purpose of its ethics program. Paragraph (a) clarifies that the outside employment, except for Special Government Employees, must be approved by the employee's supervising TVA vice president or designee. The employee is required to request approval in writing, describing the organizations, duties, hours of work, and remuneration pertaining to the outside employment. Paragraph (b) clarifies the standard for review and approval. To ensure that § 7901.102 is not in itself construed as authority to totally prohibit outside employment, § 7901.102(b) states that approval will be granted only upon a determination that the prospective outside employment is not expected to involve conduct prohibited by statute or Federal regulations, including 5 CFR part 2635. Paragraph (c) is intended to foster efficient administration by allowing exclusion from the approval requirement for classes of employees as to which outside employment is unlikely to raise issues of compliance with 5 CFR part 2635. Paragraph (d) adds a definition of employment for purposes of applying the requirement for prior approval set forth in paragraph (a) of the section.

III. Repeal of Superseded TVA Standards of Conduct Regulations

The Tennessee Valley Authority is repealing those sections of its standards of conduct regulations at 18 CFR part 1300 which have been superseded by the OGE regulations at 5 CFR parts 2634 or 2635 or by the TVA's supplemental regulations at new 5 CFR 7901 made effective by this final rule. To ensure that employees are on notice of the ethical standards to which they are subject, TVA is replacing the superseded standards at 18 CFR part 1300 with a provision that cross-references 5 CFR parts 2634, 2635, and 7901. To accommodate the removal of superseded provisions. TVA is renumbering and reissuing existing sections of 18 CFR part 1300 dealing with gambling, harassment, and conduct prejudicial to the Government which have not been superseded. The Office of Government Ethics (OGE) concurs in the reissuance of these regulations only insofar as it has determined that the substance of new 18 CFR 1300.102–1300.107 need not be issued as part of TVA's supplemental regulations at 5 CFR part 7901. Pursuant to 5 CFR 2635.402(d), TVA is also renumbering and reissuing, with a revised heading, its regulatory waivers at 18 CFR 1300.734–14(c) which were issued under the authority of 18 U.S.C. 208(b)(2); it is anticipated that these waivers will be superseded in the future by new OGE regulations. See 60 FR

44706–44709 (August 28, 1995) and 60 FR 47208–47233 (September 11, 1995).

IV. Matters of Regulatory Procedure

Administrative Procedure Act

TVA has found that good cause exists under 5 U.S.C. 553 (b) and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to these rules and repeals. The supplemental regulations are essentially a restatement of rules previously contained in the standards of conduct, and TVA believes that it is important to a smooth transition from TVA standards of conduct to the Executive branch standards that these rules become effective as soon as possible. Furthermore, this rulemaking is related to TVA organization, procedure, and practice.

Regulatory Flexibility Act

TVA has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that these regulations will not have a significant impact on small business entities because they affect only TVA employees.

Paperwork Reduction Act

TVA has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these regulations do not contain any information collection requirements that require the approval of the Office of Management and Budget.

Environmental Impact

This decision will not have a significant impact upon the quality of the human environment or the conservation of energy resources

List of Subjects

5 CFR Part 7901

Conflict of interests, Government employees.

18 CFR Part 1300

Government employees.

Dated: April 5, 1996.

William L. Osteen,

Associate General Counsel and Designated Agency Ethics Official, Tennessee Valley Authority.

Approved: April 12, 1996.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Tennessee Valley Authority, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations and title 18, chapter XIII of the Code of Federal Regulations as follows:

TITLE 5—[AMENDED]

1. A new chapter LXIX, consisting of part 7901, is added to title 5 of the Code of Federal Regulations to read as follows:

CHAPTER LXIX—TENNESSEE VALLEY AUTHORITY

PART 7901—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE TENNESSEE VALLEY AUTHORITY

Sec.
7901.101 General.
7901.102 Prior approval for outside employment.

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 16 U.S.C. 831–831dd; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.803.

§ 7901.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Tennessee Valley Authority (TVA) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition, some TVA employees are subject to the executive branch financial disclosure regulations at 5 CFR part 2634.

§ 7901.102 Prior approval for outside employment.

(a) Before engaging in outside employment, with or without compensation, an employee, other than a special Government employee, must obtain written approval from the supervising TVA vice president or designee. The written request shall be submitted through the employee's supervisor or human resource office and shall, at a minimum, identify the employer or other person for whom the services are to be provided, as well as the duties, hours of work, and compensation involved in the proposed outside employment.

(b) Approval under paragraph (a) of this section shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(c) Vice presidents or other officers of TVA may, after consultation with the Designated Agency Ethics Official, exempt specified classes of employees from this section based upon a determination that the official duties of employees in the class are such that their outside employment activities are not likely to raise issues of compliance with 5 CFR part 2635.

(d) For purposes of this section, employment means any form of non-Federal employment or business relationship involving the provision of services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless such activities involve the provision of professional services or advice or are for compensation other than reimbursement for actual expenses.

18 CFR CHAPTER XIII—TENNESSEE VALLEY AUTHORITY

2. Part 1300 is revised to read as follows:

PART 1300—STANDARDS OF CONDUCT FOR EMPLOYEES OF TENNESSEE VALLEY AUTHORITY

Sec.
1300.101 Cross reference to employee ethical conduct standards and other applicable regulations.
1300.102 Gambling, betting, and lotteries.
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1300.107 Financial interest exemptions.

Authority: 16 U.S.C. 831–831dd; 18 U.S.C. 208(b)(2).

§ 1300.101 Cross references to employee ethical conduct standards and other applicable regulations.

Employees of the Tennessee Valley Authority (TVA) are subject to the executive branch-wide standards of ethical conduct at 5 CFR part 2635 and to the TVA regulations at 5 CFR part 7901 which supplement the executive branch-wide standards. In addition, certain TVA employees are subject to executive branch-wide financial disclosure regulations at 5 CFR part 2634.

§ 1300.102 Gambling, betting, and lotteries.

An employee shall not participate, while on Government- or TVA-owned or leased property or while on TVA duty, in any gambling activity including the operation of a gambling device, in

conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket. However, this section does not preclude activities:

(a) Necessitated by an employee's law enforcement duties; or

(b) Under section 7 of Executive Order 12353 (47 FR 12785, 3 CFR, 1982 Comp., p. 139) and similar TVA-approved activities.

§ 1300.103 General conduct prejudicial to TVA.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to TVA.

§ 1300.104 Sexual harassment.

It is TVA policy that all TVA employees are responsible for assuring that the workplace is free from sexual harassment. Accordingly, all employees must avoid any action or conduct which could be viewed as sexual harassment including:

(a) Unwelcome sexual advances;

(b) Requests for sexual favors; and

(c) Other verbal or physical conduct of a sexual nature when:

(1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

(2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

(3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

§ 1300.105 National origin harassment.

It is TVA policy that all TVA employees are responsible for assuring that the workplace is free from national origin harassment. Accordingly, all employees must avoid any action or conduct which could be viewed as national origin harassment, including ethnic slurs and other verbal or physical conduct relating to an individual's national origin when such conduct:

(a) Has the purpose or effect of creating an intimidating, hostile, or offensive working environment;

(b) Has the purpose or effect of unreasonably interfering with an individual's work performance; or

(c) Otherwise adversely affects an individual's employment opportunities.

§ 1300.106 Harassment on the basis of race, color, religion, age, or disability.

It is TVA policy that all TVA employees are responsible for assuring that the workplace is free from harassment on the basis of race, color, religion, age, or disability. Accordingly, all employees must avoid any action or conduct which could be viewed as harassment on these bases, including any verbal or physical conduct relating to an individual's race, color, religion, age, or disability when such conduct:

(a) Has the purpose or effect of creating an intimidating, hostile, or offensive working environment;

(b) Has the purpose or effect of unreasonably interfering with an individual's work performance; or

(c) Otherwise adversely affects an individual's employment opportunities.

§ 1300.107 Financial interest exemptions.

In accordance with the provisions of 18 U.S.C. 208(b)(2), TVA has exempted the following financial interests of its employees from the requirements of 18 U.S.C. 208(a) upon the ground that such interests are too remote or too inconsequential to affect the integrity of such employees' services. When any of the following exemptions applies only to a limited range of official actions, rather than all official acts, the range of actions will be specified within the language of the exemption.

(a) An investment in a business enterprise in the form of ownership of bonds, notes, and other evidences of indebtness which are not convertible into shares of preferred or common stock and have no warrants attached entitling the holder to purchase stock provided that the estimated market value of the interest does not exceed $5,000;

(b) An investment in the form of shares in the ownership of enterprises, including preferred and common stocks whether voting or nonvoting, or warrants to purchase such shares, or evidences of indebtedness convertible into such shares provided that the estimated market value of the interest does not exceed $5,000 and does not exceed 1 percent of the estimated market value of all the outstanding shares of the enterprise;

(c) Shares or investments in a well-diversified money market or mutual fund;

(d) Vested interests in a pension fund arising out of former employment and to which no further contributions are being made in the employee's behalf, provided that, if the pension plan is a defined benefit plan, the assets of the plan are diversified. For the purpose of this provision, payments are not considered to be made ''in the employee's behalf'' if they are made solely to maintain adequate plan funding rather than to provide specific benefits for the employee; or

(e) The interest an employee has by virtue of his or her personal or family use of electric power or through his or her interests in an organization using electric power generated or distributed by TVA, for purposes of his or her official actions at TVA in the process of developing or approving TVA power rate schedules.

[FR Doc. 96–10940 Filed 5–3–96; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Docket No. FV96–946–2IFR]

Irish Potatoes Grown in Washington; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the State of Washington Potato Committee (Committee) under Marketing Order No. 946 for the 1996–97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of Irish potatoes grown in Washington. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on July 1, 1996. Comments received by June 5, 1996, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, FAX 202–720–5698, or Dennis L. West, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS,

USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503–326–2724, FAX 503–326–7440.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 113 and Order No. 946, both as amended (7 CFR part 946) regulating the handling of Irish potatoes grown in Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Washington potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes beginning July 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

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

There are approximately 450 producers of Washington potatoes in the production area and approximately 40 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Washington potato producers and handlers may be classified as small entities.

The Washington potato marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Washington potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on February 15, 1996, and unanimously recommended 1996–97 expenditures of $42,500 and an assessment rate of $0.003 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were $42,300. The assessment rate of $0.003 is the same as last year's established rate. Major expenditures recommended by the Committee for the 1996–97 year include $17,400 for an agreement with the Washington State Potato Commission to provide miscellaneous services to the Committee and $6,000 for compliance audits, the same as the budgeted amounts for these items in 1995–96.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Washington potatoes. Potato shipments for the year are estimated at 9,000,000 hundredweight which should provide $27,000 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds remaining in the reserve at the end of the 1996–97 fiscal period should be about $74,500. Funds in the reserve will be kept within the maximum permitted by the order.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Agricultural Marketing Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1996–97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period begins on July 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period; (3) handlers are aware of this

action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 946 is amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 946.248 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 946.248 Assessment rate.

On and after July 1, 1996, an assessment rate of $0.003 per hundredweight is established for Washington potatoes.

Dated: April 30, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–11151 Filed 5–3–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 956

[Docket No. FV96–956–2IFR]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the Walla Walla Sweet Onion Committee (Committee) under Marketing Order No. 956 for the 1996–97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of Sweet Onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon. Authorization to assess onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on June 1, 1996. Comments received by June 5, 1996, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, FAX 202–720–5698, or Robert J. Curry, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503–326–2724, FAX 503–326–7440.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 956 (7 CFR part 956) regulating the handling of Sweet Onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Walla Walla Sweet Onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions beginning June 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

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

There are approximately 50 producers of Walla Walla Sweet Onions in the production area and approximately 30 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Walla Walla Sweet Onion producers and handlers may be classified as small entities.

The Walla Walla Sweet Onion marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Walla Walla Sweet Onions. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on March 12, 1996, and unanimously recommended 1996–97 expenditures of $114,000 and an assessment rate of $0.19 per 50-pound bag or equivalent of onions. In comparison, last year's budgeted expenditures were $72,000. The assessment rate of $0.19 is $0.07 higher than last year's established rate. Major expenditures recommended by the Committee for the 1996–97 year include $34,000 for administrative expenses, $62,000 for research and promotion, and $9,000 for compliance. Budgeted expenses for these items in 1995–96 were $28,000, $22,000, and $9,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Walla Walla Sweet Onions. Onion shipments for the year are estimated at 600,000 50-pound bags which should provide $114,000 in assessment income, which will be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1996–97 fiscal period are estimated at $27,000. Funds in the reserve will be kept within the maximum permitted by the order.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Agricultural Marketing Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1996–97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period begins on June 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to the assessment rate action issued last year; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 956 is amended as follows:

PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON

1. The authority citation for 7 CFR part 956 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 956.202 is added to read as follows:

Note: This section will not appear in the Annual Code of Federal Regulations.

§ 956.202 Assessment rate.

On and after June 1, 1996, an assessment rate of $0.19 per 50 pound bag or equivalent is established for Walla Walla Sweet Onions.

Dated: April 30, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–11150 Filed 5–03–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 985

[Docket No. FV96–985–2–IFR]

Spearmint Oil Produced in the Far West; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the Spearmint Oil Administrative Committee (Committee) under Marketing Order No. 985 for the 1996–97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of spearmint oil produced in the Far West. Authorization to assess spearmint oil handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on June 1, 1996. Comments received by June 5, 1996, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone (503) 326–2724; or Tershirra T. Yeager, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 720–5127.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho,

Oregon, and designated parts of California, Nevada, Montana, and Utah), hereinafter referred to as the ''order.'' The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Far West spearmint oil handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable spearmint oil beginning June 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

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

There are approximately 260 producers of spearmint oil in the production area and 8 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A minority of spearmint oil producers and handlers may be classified as small entities.

The spearmint oil marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of Far West spearmint oil. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on February 27, 1996, and unanimously recommended 1996–97 expenditures of $230,752 and an assessment rate of $0.10 per pound of spearmint oil. In comparison, last year's budgeted expenditures were $233,272. The assessment rate of $.10 is the same as last year's established rate. Major expenditures recommended by the Committee for 1996–97 include $96,200 for administrative expenses, $113,552 for salaries, and $21,000 for committee travel. Budgeted expenses for these items in 1995–96 were $102,900, $107,372, and $23,009, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Far West spearmint oil. Spearmint oil shipments for the year are estimated at 2,081,610 pounds which should provide $208,161 in assessment income. Income derived from handler assessments, along with interest income and funds from the committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1996–97 fiscal year are estimated at $162,923. Funds in the reserve will be kept within the maximum permitted by the order.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment is needed. Further rulemaking will be undertaken as necessary. The Committee's 1996–97 budget and those for subsequent fiscal years will be reviewed and as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period begins on June 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable spearmint oil handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely

received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is amended as follows:

PART 985—SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 985.141 is added to read as follows:

§ 985.141 Assessment rate.

On and after June 1, 1996, an assessment rate of $0.10 per pound is established for Far West spearmint oil. Unexpended funds may be carried over as a reserve.

Dated: April 30, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–11152 Filed 5–3–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1007

[Docket No. AO–366–A37; DA–95–22]

Milk in the Southeast Marketing Area; Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends certain location adjustments under the Southeast Federal milk marketing order. The amendments are based upon industry proposals considered at a public hearing held on September 19, 1995. The amended order was approved by more than two-thirds of the producers voting in the specified marketing area.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Division, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: This administrative rule is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote orderly marketing of milk by producers and regulated handlers.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Prior Documents in This Proceeding

Notice of Hearing: Issued August 11, 1995; published August 17, 1995 (60 FR 42815).

Supplemental Notice of Hearing: Issued September 8, 1995; published September 13, 1995 (60 FR 47495).

Recommended Decision: Issued December 18, 1995; published December 27, 1995 (60 FR 66929).

Final Decision: Issued March 18, 1996; published March 22, 1996 (61 FR 11756).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Southeast marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The Southeast order, as hereby amended, and all the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area. The minimum prices specified in the order, as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The Southeast order, as hereby amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of more than 50 percent of the milk which is marketed within the Southeast marketing area to sign a proposed marketing agreement tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is favored by at least two-thirds of the producers who during December 1995 were engaged in the production of milk for sale in the Southeast marketing area.

List of Subjects in 7 CFR Part 1007

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the

handling of milk in the Southeast marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended, as follows:

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

1. The authority citation for 7 CFR part 1007 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 1007.2 [Amended]

2. In § 1007.2, Zone 11, under ''Alabama Counties'' the words ''(more than 20 miles from the Mobile city hall)'' are removed following the word ''Mobile'' and under ''Louisiana Parishes'' the words ''(north of State Highway 16)'' are added following the word ''Tangipahoa''.

3. In § 1007.2, Zone 12, the heading ''Alabama Counties'' and the entry under it are removed and under ''Louisiana Parishes'' the words ''Tangipahoa (south of State Highway 16)'' are added following the word ''St. Mary,''.

§ 1007.50 [Amended]

4. In § 1007.50(d), the words ''value per hundredweight of 3.5 percent milk and rounded to the nearest cent, and subject to the adjustments set forth in paragraph (c) of this section for the applicable month'' are removed and the words ''times 35 and rounded to the nearest cent'' are added in their place.

§ 1007.92 [Amended]

5. In the introductory text of § 1007.92(c), the word ''four'', where it appears for the third and final time, is changed to read ''three''.

Dated: April 29, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96–10992 Filed 5–3–96; 8:45 am]

BILLING CODE 3410–02–P

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB52

Loan Policies and Operations; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final regulation under part 614 on March 20, 1996 (61 FR 11303). The final regulation removes the requirement that Farm Credit institutions give borrowers 10 days prior notification of a change in the interest rate on their variable rate loans and replaces it with a 10-day post notification for interest rate changes for administered rate loans and a 30-day notice if the loan is tied to an external index. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the Federal Register during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is May 3, 1996.

EFFECTIVE DATE: The regulation amending 12 CFR part 614 published on March 20, 1996 (61 FR 11303) is effective May 3, 1996.

FOR FURTHER INFORMATION CONTACT:

Robert Child, Policy Analyst, Regulation Development, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Joy E. Strickland, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a) (9) and (10))

Dated: May 1, 1996.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 96–11225 Filed 5–03–96; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–58; Amendment 39–9461; AD 95–26–03]

Airworthiness Directives; Pratt and Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 95–26–03 applicable to Pratt & Whitney (PW) JT8D series turbofan engines that was published in the Federal Register on December 27, 1995 (60 FR 66872). An engine model was omitted from the Applicability paragraph. This document adds the omitted engine model. In all other respects, the original document remains the same.

DATES: Effective May 6, 1996.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive applicable to Pratt & Whitney (PW) JT8D series turbofan engines, was published in the Federal Register on December 27, 1995 (60 FR 66872). The following correction is needed:

On page 66874, in the first column, in the Compliance Section, in the Applicability paragraph, in the second line, ''Models JT8D–1, –1A, –1B, –7, –7A, –9, –9A '' should read ''Models JT8D–1, –1A, –1B, –7, –7A, –7B. –9, –9A.''

Issued in Burlington, MA, on April 17, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–11172 Filed 5–3–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–CE–22–AD; Amendment 39–9610; AD 96–10–05]

RIN 2120–AA64

Airworthiness Directives; Maule Aerospace Technologies, Inc. Models M–4–210 and M–4–210C Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Maule Aerospace Technologies, Inc. (Maule) Models M–4–210 and M–4–210C airplanes that have Dual Exhaust System 5230F installed. This action requires relocating the gascolator and electric fuel pump away from the dual exhaust system. The Federal Aviation Administration (FAA) recently became aware that, with these dual exhaust systems installed on the affected airplanes, the left-hand exhaust stack is routed almost directly below the fuel gascolator. The close proximity of the flammable fuel to the exhaust system presents an unsafe condition and violates current regulations. The actions specified by this AD are intended to prevent an airplane engine fire caused by the close proximity of the fuel gascolator and electric fuel pump to the exhaust system.

DATES: Effective June 21, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 21, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from Maule Aerospace Technology, Inc., Lake Maule, Route 5, Box 318, Moultrie, Georgia 31768; telephone (912) 985–2045; facsimile (912) 890–2402. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–22–AD, 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: Ms. Juanita Craft-Lloyd, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7373; facsimile (404) 305–7348.

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 Maule Models M–4–210 and M–4–210C airplanes that have Dual Exhaust System 5230F installed was published in the Federal Register on June 12, 1995 (60 FR 35877). The action proposed to require relocating the gascolator and electric fuel pump. Accomplishment of the proposed action would be in accordance with Maule Service Bulletin No. 10, dated September 16, 1994.

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 125 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 8 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $158 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $79,750. This figure is based on the assumption that no owner/operator of the affected airplanes has relocated the gascolator and electric fuel pump.

Maule has informed the FAA that enough parts have been distributed to accomplish the relocation on two of the affected airplanes. Assuming that each owner/operator that received parts has accomplished the relocation, the cost impact upon the public is reduced by $1,276 from $79,750 to $78,474.

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 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

96–10–05 Maule Aerospace Technologies, Inc.: Amendment 39–9610; Docket No. 95–CE–22–AD.

Applicability: The following airplane models and serial numbers, certificated in any category, that have Dual Exhaust System 5230F installed:

Model	Serial numbers
M–4–210	1001 through 1045.
M–4–210C	1001C through 1080C.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it. Compliance: Required within the next 50 hours time-in- service after the effective date of this AD, unless already accomplished.

To prevent an airplane engine fire caused by the close proximity of the fuel gascolator and electric fuel pump to the exhaust system, accomplish the following:

(a) Relocate the gascolator and fuel pump from above the air egress to the left-side of the airplane in accordance with Maule Service Bulletin No. 10, dated September 16, 1994.

(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, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

(d) The relocation required by this AD shall be done in accordance with Maule Service Bulletin No. 10, dated September 16, 1994. 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 Maule Aerospace Technology, Inc., Lake Maule, Route 5, Box 318, Moultrie, Georgia 31768. 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 (39–9610) becomes effective on June 21, 1996.

Issued in Kansas City, Missouri, on April 30, 1996.

Bobby W. Sexton,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–11167 Filed 5–3–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. Docket No. 94–ANE–56; Amendment 39–9513; AD 96–04–02]

Airworthiness Directives; AlliedSignal Inc. ALF502L Series Turbofan Engine

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 96–04–02 applicable to AlliedSignal Inc. (formerly Textron Lycoming) ALF502L series turbofan engines that was published in the Federal Register on February 29, 1996 (61 FR 7692). The AD number in the compliance section is incorrect. This document corrects the AD number. In all other respects, the original document remains the same.

DATES: Effective May 6, 1996.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive applicable to AlliedSignal Inc. (formerly Textron Lycoming) ALF502L engines, was published in the Federal Register on February 29, 1996 (61 FR 7692). The following correction is needed:

On page 7693, in the middle column, in the Compliance Section 2., in the fourth line, ''94–04–02'' should read ''96–04–02.''

Issued in Burlington, MA, on April 22, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–11173 Filed 5–3–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 73

[Airspace Docket No. 95–ANE–71]

Change in Using Agency for Restricted Areas R–4102A and B, Fort Devens; MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the using agency for Restricted Areas R–4102A and B, Fort Devens, MA, from ''Director of Plans, Training and Security, Fort Devens, MA'' to ''Chief, Reserve Component Division, Devens Reserve Forces Training Area, Ayer, MA.'' This is an administrative change resulting from a realignment of responsibilities within the Department of the Army. There are no changes to the boundaries, designated altitudes, time of designation, or activities conducted within these restricted areas.

EFFECTIVE DATE: 0901 UTC, June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division (ATA–400), Office of Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–3075.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations changes the using agency for Restricted Areas R–4102A and B, Fort Devens, MA, from ''Director of Plans, Training and Security, Fort Devens, MA'' to ''Chief, Reserve Component Division, Devens Reserve Forces Training Area, Ayer, MA.'' This is an administrative change to reflect organizational changes within the Department of the Army. There are no changes to the dimensions, time of designation, or activities conducted within the affected restricted areas. Because this action is a minor technical amendment in which the public is not particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 73.41 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8C dated June 29, 1995.

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

Environmental Review

This action changes the using agency of the restricted areas. There are no changes to the boundaries, designated altitudes, times of designation, or activities conducted within the affected restricted areas. Accordingly, this action is not subject to environmental assessments and procedures as set forth in FAA Order 1050.1D, ''Policies and Procedures for Considering Environmental Impacts'' and the National Environmental Policy Act.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

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

§ 73.41 [Amended]

2. Section 73.41 is amended as follows:

R–4102A Fort Devens, MA [Amended]

By removing ''Using agency. Director of Plans, Training and Security, Fort Devens, MA.'' and substituting the following: ''Chief, Reserve Component Division, Devens Reserve Forces Training Area, Ayer, MA.''

R–4102B Fort Devens, MA [Amended]

By removing ''Using agency. Director of Plans, Training and Security, Fort Devens, MA.'' and substituting the following: ''Chief, Reserve Component Division, Devens Reserve Forces Training Area, Ayer, MA.''

Issued in Washington, DC, on April 16, 1996.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 96–11252 Filed 5–3–96; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

Ethics Training for Registrants

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: On December 14, 1995, the Commodity Futures Trading Commission (Commission or CFTC) published for comment proposed amendments to § 3.34, which governs

ethics training for Commission registrants. These amendments require ethics training providers, who have not already been authorized by the Commission to provide ethics training, to pass the Series 3 Examination, the standard industry proficiency test, and possess three years of relevant experience. The rule is now also applicable to state-accredited entities, which in the past were exempt from certain requirements.

EFFECTIVE DATE: These rule amendments will become effective June 5, 1996. However, with respect to state-accredited persons or entities providing ethics training pursuant to § 3.34 as of March 29, 1996, the applicable date shall be August 6, 1996.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel or Myra R. Silberstein, Attorney-Advisor, Division of Trading and Markets, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418–5450.

SUPPLEMENTARY INFORMATION:

I. Background

Section 210 of the Futures Trading Practices Act of 1992 added a new paragraph (b) to Section 4p of the Commodity Exchange Act (Act) to mandate ethics training for persons required to be registered under the Act.[1] On April 6, 1993, the Commission adopted Rule 3.34 to implement this Congressional mandate.[2] Rule 3.34 requires natural persons registered under the Act to attend ethics training to ensure that they understand their responsibilities to the public under the Act. The required training must address the requirements of the Act and relevant rules concerning the treatment and handling of customer orders and business. Issues to be addressed may include: Honesty, fairness and the interests of customers and the integrity of the markets; effective supervisory systems and controls; assessment of financial circumstances and investment experience of customers; disclosure of material information; and avoidance of conflicts of interest.

New registrants must attend ethics training within six months of being granted registration and every three years thereafter. The initial training is required to be at least four hours in duration; subsequent training must be at least one hour in duration. Persons registered when Rule 3.34 became effective on April 26, 1993 were granted until April 26, 1996 to attend an initial training session of at least two hours in duration and thereafter to attend a one-hour session every three years. Ethics trainers must maintain records of materials used in such training and of attendees at such training.

In December 1995, the Commission adopted amendments to Rule 3.34 to enhance the operation of the ethics training program and furnish additional guidance with respect to the activities of ethics training providers.[3] These amendments, which became effective on January 12, 1996, require, among other things, that a person seeking to provide ethics training certify that he is not subject to a statutory disqualification from registration under the Act,[4] barred from service on self-regulatory organization (SRO) governing boards or committees,[5] or subject to a pending proceeding concerning possible violations of the Act or rules or orders promulgated thereunder.[6] Also in December 1995, the Commission published proposals for further amendments to Rule 3.34 which would require that persons who seek to provide ethics training: (1) present satisfactory evidence of successful completion of proficiency testing requirements established by a registered futures association; and (2) possess a minimum of three years of relevant experience. The Commission also proposed to amend Rule 3.34 to eliminate the provision permitting state-accredited entities to provide ethics training without compliance with the requirements applicable to other providers under the rule.[7]

The Commission received five comment letters on the proposed rule amendments. The commenters included a registered futures association, an SRO and three ethics training providers. The commenters generally supported the objectives of the proposed rule amendments, but some commenters recommended modifications of the proposals. Comments addressed to specific provisions of the proposed rule amendments and the Commission's resolution of the issues raised therein are discussed below in the context of the relevant rule provision.

Based upon its review of the comments received and in light of its experience in administering this program, the Commission has adopted, substantially in the form proposed, the amendments to Rule 3.34 regarding ethics training providers published in December 1995. The amendments adopted herein will require any person other than an SRO seeking to provide ethics training to meet a proficiency testing requirement and possess a minimum of three years of relevant experience. These amendments have been adopted generally as proposed, with certain clarifications based upon the Commission's review of the comments received. The provisions of the rule relating to the topics to be covered in ethics training and the minimum requirements for attendance by registrants at such training remain unchanged.

II. Amendments to Commission Rule 3.34

A. Proficiency Testing and Minimum Experience Requirements

Currently, Rule 3.34 requires that any person seeking to provide ethics training to registrants under Rule 3.34, other than an SRO or a state-accredited entity, certify to a registered futures association that such person, any principals thereof (as defined in Commission Rule 3.1(a))[8] and any individuals who, on behalf of such person, present ethics training or prepare ethics training videotapes or electronic presentations are not subject

[1] This provision of the Act is codified at 7 U.S.C. 6p(b) (1994) and states that:

The Commission shall issue regulations to require new registrants, within 6 months after receiving such registration, to attend a training session, and all other registrants to attend periodic training sessions, to ensure that registrants understand their responsibilities to the public under this Act, including responsibilities to observe just and equitable principles of trade, any rule or regulation of the Commission, any rule of any appropriate contract market, registered futures association, or other self-regulatory organization, or any other applicable Federal or state law, rule or regulation.

[2] 58 FR 19575, 19584–19587, 19593–19594 (Apr. 15, 1993). In September, 1993, the Commission issued a Federal Register release to clarify the procedures to be followed by persons seeking to provide ethics training pursuant to Rule 3.34. 58 FR 47890 (Sept. 13, 1993).

[3] 60 FR 63907 (Dec. 13, 1995).

[4] 7 U.S.C. 12a(2) and (3)(1994). The Act specifies several grounds for disqualification from registration including, among others, a prior revocation of registration, felony conviction, and an injunction relating to futures or securities activities.

[5] No person may serve on SRO governing boards or committees who, among other things, has been found within the prior three years to have committed a ''disciplinary offense'' or entered into a settlement agreement with respect to a charge involving a ''disciplinary offense,'' is currently suspended from trading on any contract market, is suspended or expelled from membership in any SRO, or is currently subject to an agreement with the Commission or an SRO not to apply for registration or membership. A ''disciplinary offense'' for these purposes means any violation of the Act or the rules promulgated thereunder or SRO rules other than those relating to: (1) Decorum or attire; (2) financial requirements; or (3) reporting or recordkeeping, unless resulting in fines aggregating more than $5,000 in a calendar year, provided such SRO rule violations did not involve fraud, deceit or conversion, or result in a suspension or expulsion. 17 CFR 1.63 (1995).

[6] *See* Commission Rule 3.34(b)(3), 60 FR 63907, 63912.

[7] 60 FR 64132 (Dec. 14, 1995).

[8] 17 CFR 3.1(a) (1995).

to: (1) Statutory disqualification from registration under Sections 8a (2) or (3) of the Act; (2) a bar from service on SRO governing boards or committees based upon disciplinary histories pursuant to Commission Rule 1.63 or any SRO rule adopted thereunder; and (3) a pending adjudicatory proceeding under Sections 6(c), 6(d), or 9 of the Act, or similar proceeding under Section 8a of the Act, or Commission Rules 3.55, 3.56 or 3.60. If the person intends to conduct training via videotape or electronic presentation, he must also certify that he will maintain documentation reasonably designed to verify attendance of registrants at such presentations for the minimum time required. These certifications are continuous; thus, if circumstances change which result in the certification becoming inaccurate, the ethics training provider must promptly so inform the registered futures association which, upon being so notified, shall refuse to include in, or shall remove such person from, the list of ethics training providers.[9]

The amendments to Rule 3.34 proposed in December 1995 would require any person seeking to provide ethics training (other than an SRO) to furnish satisfactory evidence to a registered futures association that he has met the proficiency testing requirement established by a registered futures association pursuant to Section 17(p)(1) of the Act for the registration of commodity professionals [10] and possesses three years of relevant experience. Currently, the National Commodity Futures Examination (Series 3 Exam) is the proficiency test required to be completed by most commodity professionals.[11]

The proficiency requirement, coupled with a three-year experience requirement, provides an even-handed, objective basis for assuring a minimum level of expertise. Further, such standards are compatible with the method used by the Commission to date in reviewing applications from potential offerors of ethics training. As the Commission noted in proposing the original Rule 3.34, ''pedagogical expertise and knowledge of futures are factors that should be taken into consideration in evaluating potential offerors of ethics training.'' [12] Consequently, in reviewing applications filed under Rule 3.34 by persons seeking to provide ethics training, the Commission has endeavored to assure that such providers demonstrate pedagogical experience and knowledge of the futures markets.

In commenting on these proposed amendments, the National Futures Association (NFA) stated that it fully supports the concept of requiring ethics training providers to meet objective and readily measurable standards of proficiency. NFA reiterated its view, expressed initially in commenting upon the amendments to Rule 3.34 in December 1995, that it is imperative that these standards assure that ethics training providers possess a working knowledge of the futures industry and relevant regulations. NFA expressed its belief that satisfactory completion of the Series 3 Exam, in conjunction with three years of relevant experience, generally will achieve this end.

Two commenters suggested that persons having certain types of experience, *e.g.*, former CFTC Commissioners or non-compensated instructors, should be automatically exempted from the proficiency testing requirement. One commenter expressed concern that the proposed amendments would exclude attorneys who have practiced extensively in this field but who would be unwilling to incur the time and expense associated with taking the Series 3 Exam. This commenter recommended an alternative proficiency requirement to the Series 3 Exam based upon representations that the proposed provider is not subject to a statutory disqualification, is a member in good standing of a state bar association and: (1) Was a CFTC Commissioner or staff attorney or SRO staff attorney for at least two years; (2) has taught a futures course at an accredited university or law school for at least two years; or (3) has had a law practice consisting of at least thirty percent futures work over the previous three years. A second commenter proposed that the Commission exempt from the proficiency testing requirement experienced new instructors who participate in ethics training programs previously authorized by the Commission. This commenter suggested that such an exemption could be limited, so as not to detract from achievement of the objective of assuring effective, high quality ethics training, to instructors who: (1) Co-instruct with at least one other instructor who has passed the Series 3 Exam; (2) possess qualifications similar to those instructors previously participating as ethics training providers; (3) are not compensated; and (4) meet minimum experience requirements. The commenter supported such an exemption as a means of assuring a healthy influx of additional qualified instructors. This commenter noted that its pro bono instructors are highly experienced in-house counsel and compliance officers of future commission merchants, commodity pool operators and commodity trading advisors and attorneys specializing in financial services law and regulation who have been very effective instructors of ethics training.

The Commission believes that requiring persons who seek to provide ethics training to provide proof of satisfactory completion of a proficiency testing requirement and of three years of relevant industry or pedagogical experience provide objective, readily administered standards for determining knowledge of relevant matters, compliance with which should not be unduly burdensome.[13] Compliance with the proficiency test requirements applicable to registrants is an appropriate benchmark for a minimum level of knowledge of relevant statutory and rule requirements.[14] However, the Commission appreciates that the proficiency requirement may be unduly restrictive in some cases and believes that this requirement can be implemented with sufficient flexibility to permit highly qualified instructors, at least those providing services on a pro bono basis, to participate in ethics training programs with providers who

[9] Commission Rule 3.34(b)(3), 60 FR 63907, 63912.

[10] Section 17(p)(1) of the Act, 7 U.S.C. 21(p)(1)(1994), provides, in part, that a registered futures association must establish training standards and proficiency testing for persons involved in the solicitation of transactions subject to the Act, supervisors of such persons, and all persons for whom it has registration responsibilities.

[11] *See* NFA Registration Rule 401.

[12] 58 FR 19575, 19586.

[13] One commenter suggested that the minimum experience requirement be two years rather than three, because two years corresponds to the minimum experience required by NFA before APs of member futures commission merchants and introducing brokers are permitted to exercise discretion over accounts. *See* NFA Rule 2–8(d). However, the Commission believes that the special responsibilities of ethics training instructors warrant a three-year minimum experience requirement.

[14] The Commission believes that the Series 3 Exam is the only relevant proficiency test currently available for ethics training providers, since it is the proficiency test that is generally applicable to Commission registrants and is designed to assure a broad working knowledge of the futures industry. Although the Commission recently approved an alternative proficiency testing requirement under which general securities representatives whose commodity interest activity will be limited to managed accounts or commodity pool interests may take the Futures Managed Funds Examination (Series 31 Exam) in lieu of the Series 3 Exam, the Commission believes that even if an ethics training provider wishes to instruct only commodity pool operators, commodity trading advisors and their associated persons (APs), the more comprehensive based Series 3 Exam is the appropriate proficiency test.

have passed the Series 3 Exam. Such service is itself in furtherance of the public interest and established ethical precepts, and the Commission believes that alternative indicia of experience can be relied upon in such cases.

The Commission therefore believes that it would be appropriate for NFA, in establishing proficiency standards, to create either on a case-by-case or generic basis, a waiver of the proficiency test requirement in appropriate cases, where the proposed instructors would serve without compensation and have qualifications that evidence expertise at least comparable to that provided by successful completion of the Series 3 Exam. Such an exception might appropriately be granted in circumstances in which the person: (1) Co-instructs with at least one other instructor who has passed the Series 3 Exam; (2) meets the minimum experience requirements and has experience in financial services law and regulation; and (3) is acting on a pro bono basis, *i.e.*, without compensation other than reimbursement for travel expenses. The Commission contemplates that NFA may grant other exemptions from the proficiency test requirement in special circumstances, such as where a scheduled instructor becomes unavailable.[15]

The Commission intends that the requirement of three years of relevant experience may be satisfied not only by pedagogical experience but, also, by relevant industry experience. For example, such industry experience might be acquired through legal practice in the fields of futures or securities or employment as a compliance officer or risk manager at a brokerage or end-user firm. NFA suggests in its comment letter that guidelines, rather than an itemized list of acceptable positions, be provided to address the types of experience that would be acceptable for this purpose. Such guidelines could include examples of acceptable relevant experience, such as those suggested by the Commission, but would not preclude satisfaction of the relevant experience requirement by other means. NFA (or the Commission if it chose to retain that responsibility) would have the discretion to determine whether a potential provider had demonstrated the relevant experience.[16]

NFA expressed its willingness to establish experience re-quirements but requested confirmation that the Commission intends that it do so. The Commission believes that it is appropriate for NFA to promulgate rules establishing experience and proficiency standards for ethics training providers, subject to the general standards set forth in Rule 3.34.[17] The Commission hereby delegates authority to NFA to promulgate rules establishing experience and proficiency standards for ethics training providers. Such standards may consist of guidelines consistent with the views set forth herein.[18]

B. Applicability of Certification, Proficiency Testing and Experience Requirements

Rule 3.34 requires that any provider of ethics training, other than an SRO offering ethics training to its members or employees or an entity accredited to conduct continuing education programs by a state professional licensing authority in the fields of law, finance, accounting or economics, file the certification referred to above in order to be included on a list of ethics training providers maintained by a registered futures association. In December 1995, the Commission proposed to amend Rule 3.34 to eliminate the provision permitting state-accredited entities to provide ethics training without compliance with the requirements applicable to other providers under the rule.

The Commission received one comment letter addressing this aspect of the proposals. The commenter, an SRO, supported the proposal to impose proficiency testing and experience requirements upon ethics training providers other than SROs, even if they are state-accredited entities. The SRO stated that until now almost all exchange members received their ethics training from the exchange itself. While the SRO believes that most members will continue to attend ethics training provided by the exchange, a greater number of exchange members may choose to enroll in ethics training programs offered by providers other than the SRO as a result of the December 1995 amendments to Rule 3.34 which may increase the availability of videotape and electronic ethics training programs. Therefore, the SRO expressed a strong interest in assuring that non-SRO providers have the necessary knowledge and experience to provide such training.[19]

The Commission is adopting as proposed an amendment to Rule 3.34 to require that state-accredited entities file with the NFA the certification required under Rule 3.34(b)(3)(iii) and comply with the other relevant provisions of Rule 3.34, including proficiency testing and experience requirements. In the absence of such compliance and in light of the potential for significant variations among state-accreditation regimes, the Commission would have no ready means of assuring that such providers have a minimum level of relevant knowledge or experience.[20]

The Commission proposed that the proficiency testing and minimum experience requirements apply to the provider or sponsor of the ethics training program, to any instructors or presenters employed by the provider of such ethics training, and to those persons who prepare ethics training videotapes or electronic presentations. NFA expressed concern that the rule as proposed appeared to require that the ethics training provider itself, which in many instances would be a corporate

[15] NFA Rule 402 permits NFA's Vice-President of Compliance to waive the general proficiency requirements under circumstances approved by NFA's Board of Directors. See also NFA Interpretive Notices under Rule 402 at ¶9018 and ¶9022.

[16] NFA noted that it employs a similar approach under NFA Compliance Rule 2–8. Rule 2–8 requires NFA associates who exercise discretion over customer accounts to have been registered for two years. NFA may, at its discretion, waive this requirement if the associate shows that he has equivalent experience. Although ''equivalent experience'' is not defined in the rule, NFA has encountered no difficulties in administering this rule.

[17] 60 FR 64132, 64133.

[18] Of course, NFA's rules must be submitted to the Commission for review pursuant to Section 17(j) of the Act, which governs Commission review and approval of registered futures association rules. 7 U.S.C. 21(j) (1994).

[19] The SRO commenter also recommended an additional amendment of Rule 3.34(b)(4) to require that ethics training providers submit records of ethics training attendance by floor traders and floor brokers to the contract markets that have granted them trading privileges as well as to NFA. The Commission adopted an amendment to Rule 3.34(b)(4) in December 1995 to require ethics training providers to furnish records of attendees at such training to a registered futures association but did not propose further amendments to this provision. 60 FR 63907, 63911–63912. While the Commission is generally supportive of contract markets receiving ethics training records on floor traders and floor brokers to whom they have granted trading privileges, the Commission does not believe that an additional amendment to Rule 3.34(b)(4) is necessary to achieve that end. Contract markets may encourage or require their own floor trader and floor broker members to provide satisfactory proof of satisfactory completion of the ethics training requirements. Further, the Commission encourages ethics training providers instructing floor traders and floor brokers to provide this information to the relevant contract markets.

[20] As to whether SROs themselves should be subject to the requirements applicable to other providers under 3.34, the Commission believes that the business purposes and functions of SROs, the statutory and regulatory requirements applicable to SROs, and the Commission's oversight program for assuring compliance by SROs with their responsibilities under the Act and Commission rules provide sufficient assurance of the expertise and fitness of SROs as ethics training providers without the necessity for imposing additional requirements. Consequently, the Commission's proposals with respect to proficiency training and pedagogical or industry experience did not apply to SROs seeking to provide ethics training to their members or employees. 60 FR 64132, 64134.

entity, meet the proficiency and experience requirements. NFA recommended that the Commission clarify this aspect of the rule to make clear that the persons who will be required to meet these standards include the principals of the ethics training provider, any instructors or presenters employed by the provider and persons who prepare ethics training materials, including videotaped and electronic presentations. NFA also recommended that only those principals of registered firms that offer in-house ethics training who are directly involved with the ethics training process be required to meet the proficiency and experience requirements, noting that it would serve no purpose to require all principals of a registered firm to comply with these requirements.

The Commission agrees that clarification of the applicability of the testing and experience requirements is desirable and that these requirements should not apply to all principals of registered firms. The Commission believes that the proficiency testing and experience requirements should apply to persons who are direct participants in ethics training, whether as presenters of such programs, preparers of course materials, or supervisors of such activities. Consequently, the Commission believes that unlike the required representations concerning fitness, which apply to all principals of the ethics training provider, the testing and experience requirements should not apply solely by virtue of status as a principal, but, rather, should be applicable based upon involvement in such programs as instructors, developers, supervisors or managers of such programs.

A person who is currently acting as an instructor or course preparer for an ethics training provider whose application to provide ethics training has previously been granted by the Commission will not be subject to the proficiency testing and minimum relevant experience standards of Rule 3.34. However, should such an ethics training provider seek to add a new instructor or course preparer, such person would be subject to the proficiency testing and minimum relevant experience standards. Persons acting as instructors or presenters of in-person ethics training or preparing videotapes or electronic presentations on behalf of a state-accredited entity must meet the proficiency and experience requirements, even if such persons have previously been operating under Rule 3.34. However, for existing ethics training providers operating as of March 29, 1996 pursuant to the former Rule 3.34 provision permitting certain state-accredited entities to provide ethics training without further authorization, the effective date for these rule amendments will be deferred for 60 days to allow adequate time for filing the requisite certification and to take and pass the Series 3 Exam.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–611 (1994), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments discussed herein will not affect SROs who wish to provide ethics training but would affect all others who seek to be included on a list of authorized ethics training providers, including entities accredited to conduct continuing education programs by state professional licensing authorities in the fields of law, finance, accounting or economics. The impact of this proposal on persons seeking to become providers of ethics training should be minimal. At this time, a one-time processing fee for the Series 3 Exam offered by the NFA is $75.00. This should not constitute an unduly burdensome entry cost for ethics training providers; the same cost is incurred by all the attendees at ethics training as a cost of registration. Requiring a minimum level of experience also should not adversely impact small businesses as this requirement should not impose additional financial cost upon such entities. Further, the ethics training requirement, reflects a Congressional mandate to assure that registrants understand their responsibilities to the public under the Act. Therefore, these rule amendments will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has previously submitted the proposed rule and its associated information collection requirements to the Office of Management and Budget. While the amendments proposed herein have no burden, Rule 3.34 is a part of a group of rules which has the following burden:

Rules 3.16, 3.32 and 3.34 (3038–0023, approved June 2, 1993):

Average Burden Hours Per Response: 1.13.

Number of Respondents: 60,980.

Frequency of Response: On Occasion and Triennially.

Persons wishing to comment on the information which will be required by these rules as amended should contact Jeff Hill, Office of Management and Budget, Room 3228, NEOB, Washington, D.C. 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 1155 21st St. NW, Washington, DC 20581, (202) 418–5170.

List of Subjects in 17 CFR Part 3

Registration, Ethics Training.

Accordingly, the Commission, pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 1a, 4d, 4e, 4g, 4m, 4p, 8a and 17 thereof (7 U.S.C. 1a, 6d, 6e, 6g, 6m, 6p, 12a and 21 (1994), hereby amends Part 3 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 3—REGISTRATION

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

Authority: 7 U.S.C. la, 2, 4, 4a, 6, 6b, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21 and 23; 5 U.S.C. 552, 552b.

2. Section 3.34 is amended by removing and reserving paragraph (b)(3)(ii) and revising the introductory text of paragraph (b)(3)(iii) and paragraph (b)(3)(iii)(A)(*3*) to read as follows:

§ 3.34 Mandatory ethics training for registrants.

* * * * *

(b) * * *

(3) * * *

(ii) [Reserved]

(iii) A person included on a list maintained by a registered futures association who has presented satisfactory evidence to the registered futures association that any individuals, on behalf of such person, who present ethics training, prepare an ethics training videotape or electronic presentation, or who supervise the foregoing, have taken and passed the proficiency testing requirements for an ethics training provider, as established by rules of a registered futures association that have been approved by the Commission, and possess a minimum of three years of relevant experience for an ethics training

provider, as established by rules of a registered futures association that have been approved by the Commission, and who certifies that:

(A) * * *

(3) A pending adjudicatory proceeding under sections 6(c), 6(d), 6c, 6d, or 9 of the Act, or similar proceeding under Section 8a of the Act, or §§ 3.55, 3.56, or 3.60; and

* * * * *

Issued in Washington, DC on April 25, 1996, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–10730 Filed 5–3–96; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD13–96–012]

RIN 2115–AE46

Special Local Regulations; Annual Kennewick, Washington, Columbia Unlimited Hydroplane Races

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule.

SUMMARY: By this direct final rule, the Coast Guard is permanently amending a special local regulation governing general navigation and anchorage in the vicinity of the Annual Kennewick, Washington, Columbia Unlimited Hydroplane Races. Changes made to this regulation will clarify its annual effective date and will revise the boundaries of the regulated area. This change is intended to better inform the boating public and to improve the level of safety at this event.

DATES: This rule is effective on July 22, 1996, unless the Coast Guard receives written adverse comments or written notice of intent to submit adverse comments on or before June 20, 1996.

ADDRESSES: Comments may be mailed to U.S. Coast Guard Group Portland, 6767 N. Basin Ave., Portland, OR 97217–3992. The comments and other materials referenced in this notice will be available for inspection and copying at the above address in the St. Helens Building, Waterways Management Section. Normal office hours are between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Comments may also be hand-delivered at this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) C.A. Roskam, Waterways Management Section, U.S. Coast Guard MSO/Group Portland, OR (Telephone: (503) 240–9327).

SUPPLEMENTARY INFORMATION:

Request for Comments

Any comments must identify the name and address of the person submitting the comment, specify the rulemaking docket (CGD13–96–012) and the specific section of this rule to which each comment applies, and give the reason for each specific 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.

Regulatory Information

The Coast Guard is publishing a direct final rule, the procedures of which are outlined in 33 CFR 1.05–55, because no adverse comments are anticipated. If no adverse comments or any written notice of intent to submit adverse comment are received within the specified comment period, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days prior to the effective date, the Coast Guard will publish a notice in the Federal Register stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if the Coast Guard receives written adverse comment or written notice of intent to submit adverse comment, the Coast Guard will publish a notice in the final rule section of the Federal Register to announce withdrawal of all or part of this direct final rule. If adverse comments apply to only part of this rule, and it is possible to remove that part without defeating the purpose of this rule, the Coast Guard may adopt as final those parts of this rule on which no adverse comments were received. The part of this rule that was the subject of adverse comment will be withdrawn. If the Coast Guard decides to proceed with a rulemaking following receipt of adverse comments, a separate Notice of Proposed Rulemaking (NPRM) will be published a new opportunity for comment provided.

A comment is considered ''adverse'' if the comment explains why this rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change.

Background and Purpose

Each year, during the last week in July, the Annual Kennewick, Washington, Columbia Unlimited Hydroplane Races are held on the waters of the Columbia River between the western end of Hydro Island and the western end of Clover Island. Under current Coast Guard regulations, 33 CFR 100.1303, a special local regulation is established each year during the event to provide for public safety by controlling the movement of spectators and participants in the area of the race course.

The current regulations do not clearly state the days and times each year when the become effective. In years past, the Coast Guard has published a notice of implementation in the Federal Register in order to clearly announce the effective dates and times of the regulations for a given year. This direct final rule will permanently amend 33 CFR 100.1303, making the regulation effective each year on the last Tuesday through Sunday in July from 8:30 a.m. local time until the last race is completed each day at approximately 7:30 p.m. local time.

In recent years, the number of recreational vessels transiting the area near the race course and the number of spectator craft anchoring in the vicinity of the race course has greatly increased. The majority of the recreational vessels drawn to this event congregate in the vicinity of the upstream end of the race course. Often, spectator craft anchoring upstream of the race course break free of their anchorage and drift downstream onto the race course, endangering both themselves and race participants.

To promote the safety of spectators and participants, the boundaries of the regulated navigation area created by this special local regulation are being revised. This revision will move the upriver boundary an additional 400 yards upriver. This change is intended to increase the distance between the upriver boundary of the regulated area and the race course, therefore decreasing the likelihood that spectator boats will drift downriver into the course. At the same time the downriver boundary of the regulated area will be moved upriver and additional 1,000 yards. This change is intended to decrease the distance between the downriver boundary of the regulated area and the race course, therefore encouraging spectators to observe the race from the downriver side where there is little danger of drifting into the course.

Discussion of Rules

The Coast Guard is permanently amending 33 CFR 100.1303—Annual Kennewick, Washington, Columbia Unlimited Hydroplane Races.

The annual effective dates and times of the regulation are amended so that the regulation becomes effective each year on the last Tuesday through Sunday in July from 8:30 a.m. local time until the last race is completed each day at approximately 7:30 p.m. local time.

The boundaries of the regulated navigation area created by these regulations are also amended. The boundaries of the current regulated area, as defined in this section, include all waters of the Columbia River from the western end of Hydro Island to the western end of Clover Island at Kennewick, Washington. This amendment will change the boundaries of this regulated area to include all waters of the Columbia River between a point 400 yards upriver of Hydro Island and a point 1,000 yards upriver of Clover Island. As amended, the regulated area created by this regulation will include all waters of the Columbia River bounded by two lines drawn from shore to shore. The first line will run between position latitude 46°14′07″ N, longitude 119°10′42″ W and position latitude 46°13′42″ N, longitude 119°10′51″ W. The second line will run between position latitude 46°13′35″ N, longitude 119°07′34″ W and position latitude 46°13′10″ N, longitude 119°07′47″ W. Within these boundaries, general navigation and anchorage will be restricted by this regulation during the hours it is in effect. This change is intended to encourage spectator craft to anchor downriver of the race course, which would greatly reduce the number of vessels congregating upriver of the race course and reduce the risk of vessels floating downriver onto the race course. It is also intended to reduce the number of recreational vessels transiting from one end of the race course to the other before and after the race, thus reducing congestion in the vicinity of the event.

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). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that only minor changes are being made to the regulations and that the changes made reduce the area affected by approximately one half mile.

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.

The regulated navigation area created by this section is being reduced by this direct final rule. Moreover, vessels desiring to transit this area of the Columbia River may do so by scheduling their trips in the evening when the restrictions on general navigation imposed by this section will not be in effect. For these reasons, the Coast Guard certifies under 5 U.S.C. 605(b) that this change will not have a significant economic impact on a substantial number of small entities.

Collection-of-Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2.e.34(h) of Commandant Instruction M16475.1B, (as revised by 59 FR 38654, July 29, 1994), this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

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

Regulation

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

PART 100—[AMENDED]

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

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

2. Section 100.1303 is amended by revising paragraphs (a) and (b) as follows:

§ 100.1303 Annual Kennewick, Washington, Columbia Unlimited Hydroplane Races.

(a) This regulation is effective each year on the last Tuesday through Sunday in July from 8:30 a.m. local time until the last race is completed each day at approximately 7:30 p.m. local time, unless sooner terminated by the Patrol Commander.

(b) The Coast Guard will restrict general navigation and anchorage by this regulation during the hours it is in effect on all waters of the Columbia River bounded by two lines drawn from shore to shore; the first line running between position latitude 46°14′07″ N, longitude 119°10′42″ W and position latitude 46°13′42″ N, longitude 119°10′51″ W; and the second line running between position latitude 46°13′35″ N, longitude 119°07′34″ W and position latitude 46°13′10″ N, longitude 119°07′47″ W. [Datum: NAD 83]

* * * * *

Dated: April 25, 1996.

J.W. Lockwood,

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

[FR Doc. 96–11236 Filed 5–3–96; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 2

RIN 2900–AH74

Delegation of Authority To Order Paid Advertising for Use in Recruitment

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends regulations concerning delegations of authority to order paid advertising for use in recruitment. Under the previous regulations, the authority was delegated to heads of each department; to the Director, Office of Personnel and Labor Relations; to the deputies to such officials; and to field facility heads. To reflect current organizational structure and titles, and to ensure that delegations are made to all of those who need

authority to order paid advertising for use in recruitment, the regulations are amended to delegate such authority to Administration Heads, Assistant Secretaries, Other Key Officials (the General Counsel; the Inspector General; the Chairman, Board of Veterans' Appeals; the Chairman, Board of Contract Appeals; and the Director, Office of Small and Disadvantaged Business Utilization), Deputy Assistant Secretaries, to the deputies of such officials, to the Deputy Assistant Secretary and Associate Deputy Assistant Secretary for Human Resources Management, and to field facility Directors. Also, nonsubstantive changes are made for purposes of clarity.

EFFECTIVE DATE: May 6, 1996.

FOR FURTHER INFORMATION CONTACT: Gloria C. Oliver, Chief, Recruitment and Examining Division (054E), Employment and Training Service, Office of Human Resources Management, Department of Veterans Affairs, 810 Vermont Avenue, N.W., Washington, D.C. 20420, (202) 565–8231.

SUPPLEMENTARY INFORMATION: This final rule consists of delegations of authority and nonsubstantive changes and, therefore, is not subject to the notice and comment and effective date provisions of 5 U.S.C. 553.

The Secretary hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule merely sets forth delegations of authority and nonsubstantive changes.

There is no Catalog of Federal Domestic Assistance program number for this regulation.

List of Subjects in 38 CFR Part 2

Authority delegations (government agencies).

Approved: April 1, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 2 is amended as set forth below:

PART 2—DELEGATIONS OF AUTHORITY

1. The authority citation for part 2 continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501, unless otherwise noted.

2. Section 2.4 is revised to read as follows:

§ 2.4 Delegation of authority to order paid advertising for use in recruitment.

Paid advertisements may be used in recruitment for VA competitive and excepted service positions. Authority to order such advertisements is hereby delegated to Administration Heads, Assistant Secretaries, Other Key Officials (the General Counsel; the Inspector General; the Chairman, Board of Veterans' Appeals; the Chairman, Board of Contract Appeals; and the Director, Office of Small and Disadvantaged Business Utilization), Deputy Assistant Secretaries, to the deputies of such officials, to the Deputy Assistant Secretary and Associate Deputy Assistant Secretary for Human Resources Management, and to field facility Directors.

(Authority: 5 U.S.C. 302(b)(2); 44 U.S.C. 3702)

[FR Doc. 96–11156 Filed 5–3–96; 8:45 am]

BILLING CODE 8320–01–P

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38 CFR Part 9

RIN 2900–AH50

Servicemen's and Veterans' Group Life Insurance

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) regulations relating to Servicemen's and Veterans' Group Life Insurance by eliminating provisions that merely restate statutory provisions or that no longer apply to the insurance programs and by rewriting other provisions for purposes of clarification.

EFFECTIVE DATE: May 6, 1996.

FOR FURTHER INFORMATION CONTACT: George Poole, Chief, Insurance Program Administration, Department of Veterans Affairs Regional Office and Insurance Center, PO Box 8079, Philadelphia, Pennsylvania 19101, (215) 951–5718.

SUPPLEMENTARY INFORMATION: The Insurance Service of the Veterans Benefits Administration has determined that it is no longer practicable to publish in the Federal Register provisions that merely restate statutory provisions. This is especially evident when one considers the burden involved in keeping such regulatory provisions current with statutory changes. As an illustrative example, consider the previous 38 CFR 9.4, which merely restated the provisions of 38 U.S.C. 1967(a) as they pertain to the amount of life insurance coverage allowable under the Servicemen's Group Life Insurance (SGLI) program. When Congress established the SGLI program in 1965, it set the maximum coverage available at $10,000. VA promulgated § 9.4 to reflect this maximum coverage. Section 9.4 was merely informational, but added no real value to the operation of the SGLI program. Since then, Congress has increased the maximum coverage six times, and each time VA has had to amend § 9.4 to reflect the statutory change. If VA had not initially promulgated § 9.4, VA would have avoided a total of seven regulatory submissions and their resultant costs.

Accordingly, all or portions of §§ 9.1, 9.4, 9.5, 9.6, 9.7, 9.8, 9.10, 9.12, 9.14, 9.16, 9.17, 9.18, 9.24, 9.32, 9.34 and 9.36 are eliminated because they merely restate provisions in 38 U.S.C. Chapter 19.

Also, provisions set forth in §§ 9.2(a), 9.2(d)(3), 9.3(a), 9.3(e), 9.5(d), 9.24(a)(1), 9.24(a)(2), and 9.30(a) concern ''sunset'' requirements that no longer apply to Servicemen's or Veterans' Group Life Insurance. Consequently, these provisions are eliminated.

In addition, §§ 9.2 and 9.3 are combined and rewritten to eliminate redundant text, and amendments are made to other sections for purposes of clarification.

This final rule consists of nonsubstantive changes and, therefore, is not subject to the notice-and-comment and effective-date provisions of 5 U.S.C. 553. Also, this final rule is not a significant revision as defined in FAR 1.501–1.

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it does not contain any substantive provisions. This final rule will not significantly affect any entity. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Program number for these regulations is 64.103.

List of Subjects in 38 CFR Part 9

Life insurance, Military personnel, Veterans.

Approved: April 29, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 9 is amended as set forth below:

PART 9—SERVICEMEN'S GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

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

Authority: 38 U.S.C. 501, 1965–1979, unless otherwise noted.

2. In § 9.1, paragraphs (c), (f), (g), (h), (j), (k), (l), (o), and (s) are removed; paragraphs (i), (m), (n), (p), (q), and (r) are redesignated as paragraphs (c), (f), (g), (h), (i), and (j), respectively; and introductory text is added, and paragraphs (a), (b), (d), and (e) are revised to read as follows:

§ 9.1 Definitions.

The following definitions are in addition to those definitions in 38 U.S.C. 101 and 1965:

(a) The term *policy* means Group Policy No. G–32000, which was effective September 29, 1965, purchased from the insurer pursuant to 38 U.S.C. 1966, executed and attested on December 30, 1965, and amended thereafter.

(b) The term *administrative office* means the Office of Servicemembers' Group Life Insurance located at 213 Washington Street, Newark, NJ 07102.

* * * * *

(d) The term *reinsurer* means any life insurance company meeting all the criteria set forth in § 9.10 which reinsures a portion of the total amount of insurance covered by the policy and issues individual life insurance policies to members under the provisions of 38 U.S.C. 1968(b) and 1977(e).

(e) The term *converter* means any life insurance company meeting all the criteria set forth in § 9.10 which issues individual life insurance policies to members under the provisions of 38 U.S.C. 1968(b) and 1977(e).

* * * * *

3. Section 9.2 is revised to read as follows:

§ 9.2 Effective date; Applications.

(a) The effective date of Servicemen's Group Life Insurance will be as follows:

(1) For members who qualify for continuation of coverage under 38 U.S.C. 1967(a)(3), the effective date shall be the 121st day after termination of duty. An application and the initial premium must be received by the administrative office within 120 days following termination of duty.

(2) For members who qualify for coverage under 38 U.S.C. 1967(a)(3) and whose coverage is extended because of total disability, the effective date shall be the day following the end of the 1-year period of extended coverage or the day following the end of the total disability, whichever is the earlier date, but in no event before the 121st day following termination of duty. An application and the initial premium must be received by the administrative office within 1 year following termination of duty.

(b) The effective date of Veterans' Group Life Insurance will be as follows:

(1) For members whose Servicemen's Group Life Insurance coverage ceases under 38 U.S.C. 1968(a)(1)(A), the effective date shall be the 121st day after termination of duty. An application and the initial premium must be received by the administrative office within 120 days following termination of duty.

(2) For members whose Servicemen's Group Life Insurance coverage was extended because of total disability, the effective date shall be the day following the end of the 1-year period of extended coverage or the day following the end of the total disability, whichever is the earlier date, but in no event before the 121st day following termination of duty. An application and the initial premium must be received by the administrative office within 1 year following termination of duty.

(3) For members who qualify for coverage under 38 U.S.C. 1967(b), the effective date shall be the 121st day after termination of duty. An application, the initial premium, and proof of disability must be received by the administrative office within 120 days following termination of duty.

(4) For members of the Individual Ready Reserve or the Inactive National Guard, the effective date shall be the date an application and the initial premium are received by the administrative office. The application and initial premium must be received by the administrative office within 120 days of becoming a member of either organization.

(Authority: 38 U.S.C. 1977(e))

(c) If either an application or the initial premium has not been received by the administrative office within the time limits set forth above, Servicemen's Group Life Insurance or Veterans' Group Life Insurance coverage may still be granted if an application, the initial premium, and evidence of insurability are received by the administrative office within 1 year and 120 days following termination of duty.

(d) The effective date for Servicemen's Group Life Insurance or Veterans' Group Life Insurance in any case not otherwise covered under this section or under 38 U.S.C. 1967(a) shall be the date an application and the initial premium are received by the administrative office.

(e) For purposes of this section, an application, an initial premium, and any evidence necessary to effect Servicemen's Group Life Insurance or Veterans' Group Life Insurance coverage will be considered to have been received by the administrative office if:

(1) They are properly addressed to the administrative office, and

(2) The proper postage is affixed, and

(3) They are legibly postmarked within the time limit required for receipt by the administrative office.

§ 9.3 [Removed]

4. Section 9.3 is removed.

§ 9.6 [Redesignated as § 9.3]

5. Section 9.6 is redesignated as § 9.3. In newly redesignated § 9.3, paragraph (b) is removed, and paragraph (c) is redesignated as paragraph (b). Newly redesignated paragraph (b) is amended by removing ‘‘, § 9.5(b)(1) or (2),’’ wherever it appears; and paragraph (b)(3), is amended by removing ‘‘paragraph (c)(2)’’ and adding, in its place, ‘‘paragraph (b)(2)’’, and by removing ‘‘under § 9.5(a)’’; and paragraph (a) is revised to read as follows:

§ 9.3 Waiver or reduction of coverage.

(a) Full-time coverage which is in effect will terminate or be reduced at midnight of the last day of the month a member's written notice requesting such termination or reduction is received by his or her uniformed service. In the case of a member paying premiums directly to the administrative office, full-time coverage will terminate or be reduced as of the last day of the month for which the last full premium was paid. Termination or reduction of coverage is effective for the entire remaining period of active duty unless the member reinstates his or her coverage under the provisions of 38 U.S.C. 1967(c). If, following termination of duty, a member reenters duty (in the same or another uniformed service), a waiver or reduction for the previous period of duty will not apply to the subsequent period of duty.

§§ 9.4, 9.5, 9.7, 9.8, 9.10, 9.12, 9.14, 9.17, 9.34, and 9.36 [Removed];

§§ 9.16, 9.18, 9.20, 9.22, 9.24, 9.26, 9.27, 9.28, 9.30 and 9.32 [Redesignated as §§ 9.4 through 9.13]

6. Sections 9.4, 9.5, 9.7, 9.8, 9.10, 9.12, 9.14, 9.17, 9.34, and 9.36 are removed, and §§ 9.16, 9.18, 9.20, 9.22, 9.24, 9.26, 9.27, 9.28, 9.30, and 9.32 are redesignated as §§ 9.4, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 9.11, 9.12, and 9.13, respectively.

7. In newly redesignated § 9.4, paragraphs (a), (c), (d), (f), (h), (i), and (j) are removed; paragraphs (b), (e), and (g) are redesignated as paragraphs (a), (b), and (c), respectively; newly redesignated paragraph (c) is amended by removing ''election of optional settlement'' and adding, in its place, ''settlement option election''; introductory text is added; and newly redesignated paragraph (a) is revised to read as follows:

§ 9.4 Beneficiaries and options.

Any designation of beneficiary or election of settlement options is subject to the provisions of 38 U.S.C. 1970 and 1977 and the following provisions:

(a) Any designation of beneficiary or settlement option election made by any member insured under Servicemen's Group Life Insurance for full-time coverage or part-time coverage will remain in effect until properly changed by the member or canceled automatically for any of the following reasons:

(1) The insurance terminates following separation or release from all duty in a uniformed service.

(2) The member enters on duty in another uniformed service.

(3) The member reenters on duty in the same uniformed service more than 1 calendar day after separation or release from all duty in that uniformed service.

* * * * *

8. In newly redesignated § 9.5, paragraphs (a), (b), (c), and (e) are removed; paragraphs (f), (g), and (h) are redesignated as paragraphs (a), (b), and (c), respectively; introductory text is added, and paragraph (d) is added to read as follows:

§ 9.5 Payment of proceeds.

Proceeds shall be paid in accordance with provisions set forth in 38 U.S.C. 1970 and the following provisions:

* * * * *

(d) If a member whose coverage is extended due to total disability converts the group insurance to an individual policy which is effective before he or she ceases to be totally disabled or before the end of 1 year following termination of duty, whichever is earlier, and dies while group insurance would be in effect, except for such conversion, the group insurance will be payable, provided the individual policy is surrendered for a return of premiums and without further claim. When there is no such surrender, any amount of group insurance in excess of the amount of the individual policy will be payable.

(Authority: 38 U.S.C. 501)

§ 9.7 [Amended]

9. In newly redesignated § 9.7, paragraph (a)(1) is amended by removing ''under § 9.5(b)(3)'' and adding, in its place, ''under 38 U.S.C. 1967(b)'', and by removing ''under § 9.7(b)''. Paragraph (a)(4) is amended by removing ''and § 9.34''. Paragraph (a)(5) is amended by removing ''under § 9.7 (a) and (b)'' and adding, in its place, ''under 38 U.S.C. 1968''. Paragraph (b) is amended by removing ''in § 9.34 of this part'' and adding, in its place, ''under 38 U.S.C. 1973'', and by removing ''as required by § 9.8(c) of this part'' and adding, in its place, ''as required under 38 U.S.C. 1967(c)''. Paragraph (d) is amended by removing ''Chief Benefits Director and/or'' and adding, in its place, ''Under Secretary for Benefits and''.

10. In newly redesignated § 9.8, paragraphs (a), (b), (c), (d), and (e) are removed; paragraphs (f) and (g) are redesignated as paragraphs (a) and (b), respectively; newly redesignated paragraph (a) is amended by removing ''§ 9.34,''; and newly redesignated paragraph (b) is amended by removing ''under § 9.1(a)(3)'' and adding, in its place, ''under 38 U.S.C. 1968(a)(4)(B)''; and introductory text is added to read as follows:

§ 9.8 Termination of coverage.

Termination of coverage will be in accordance with the provisions of 38 U.S.C. 1968 and § 9.3 of this part and the following provisions:

* * * * *

11. In newly redesignated § 9.9, paragraphs (a), (a)(1), (a)(3), (b)(1), (b)(2), (b)(3), and (d) are removed; paragraph (a)(2) is redesignated as paragraph (a). Newly redesignated paragraph (a) is amended by removing ''§ 9.7(b)'' and adding, in its place, ''38 U.S.C. 1967(b) or 1968(a)''; and by removing '', in which event the insurance may be converted effective the day after the end of such 120-day period'' and adding ''.'' after ''duty''; and paragraph (b) is revised to read as follows:

§ 9.9 Conversion privilege.

* * * * *

(b) The individual policy of life insurance to which an insured may convert under 38 U.S.C. 1968(b) or 1977(e) shall not have disability or other supplementary benefits and shall not be term insurance or any policy which does not provide for cash values. Term riders providing level or decreasing insurance for which an additional premium is charged may be attached to an eligible basic conversion policy, but the rider will be excluded from the conversion pool agreement under the policy.

* * * * *

12. In newly redesignated § 9.12, paragraph (a) is removed, and paragraphs (b), (c), and (d) are redesignated as paragraphs (a), (b), and (c), respectively. Newly redesignated paragraph (a), is amended by removing ''of the remaining balance'', and by removing ''on December 31, 1964,''; newly redesignated paragraph (b) is amended by removing ''paragraph (b)''and adding, in its place, ''paragraph (a)''; newly redesignated paragraph (c) is amended by removing ''§ 9.28'' and adding, in its place, ''§ 9.11''; and the introductory text is revised to read as follows:

§ 9.12 Reinsurance formula.

The allocation of insurance to the insurer and each reinsurer will be based upon the following:

* * * * *

§ 9.13 [Amended]

12. In newly redesignated § 9.13, the first sentence is removed.

[FR Doc. 96–11157 Filed 5–3–96; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 162–2–0002a FRL–5466–1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Joaquin Valley Unified Air Pollution Control District, Santa Barbara County Air Pollution Control District, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the following districts: San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), Santa Barbara County Air Pollution Control District (SBCAPCD), and South Coast Air Quality Management District (SCAQMD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990

(CAA or the Act). The revised rules control VOC emissions from aerospace assembly and component manufacturing operations, motor vehicle and mobile equipment coating operations, crude oil production and separation, and storage of reactive organic compound liquids (ROC). Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This action is effective on July 5, 1996 unless adverse or critical comments are received by June 5, 1996. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 92123–1095.

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Suite #200, Fresno, CA 93721.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, B–23, Goleta, CA 93117.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Helen Liu, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1199.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being approved into the California SIP include: SJVUAPCD Rule 4602—Motor Vehicle and Mobile Equipment Coating Operations, SBCAPCD Rule 325—Crude Oil Production and Separation, SBCAPCD Rule 326—Storage of Reactive Organic Compound Liquids, and SCAQMD Rule 1124—Aerospace Assembly and Component Manufacturing Operations.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the San Joaquin Valley Area, the Santa Barbara Area, and the South Coast Air Basin. 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The San Joaquin Area is classified as severe, Santa Barbara Area as moderate, and the South Coast Air Basin as extreme;[2] therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP. The following table includes the dates of when the districts adopted the rules, the dates that California submitted them to EPA, and the dates that they were found to be complete pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V:[3]

Rule	Adoption	Submittal	Completeness
SJVUAPCD 4602 ...	6/15/95	10/13/95	11/28/95
SBAPCD 325	1/25/94	3/29/94	6/3/94
SBAPCD 326	12/14/93	3/29/94	6/3/94
SCAQMD 1124 ...	1/13/95	2/24/95	3/10/95

This notice addresses EPA's direct-final approval action for the above-mentioned rules.

All of these rules control VOC emissions from the operations listed above. VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted by SJVUAPCD, SBAPCD, and SCAQMD as part of an effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for these rules.

EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice'' (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] San Joaquin Valley, Santa Barbara, and South Coast retained their designation of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

''fix-up'' their RACT rules. See section 182(a)(2)(A). The CTGs applicable to some of these rules are as follows: EPA–450/2–83–007, ''Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants,'' EPA–450/2–78–047, ''Control of Volatile Organic Emissions From Petroleum Liquid Storage in External Floating Roof Tanks,'' and EPA–450/2–77–036, ''Control of Volatile Organic Emissions From Storage of Petroleum Liquid in Fixed-Roof Tanks.'' Rules 4602 and 1124 control emissions from source categories for which EPA has not yet finalized CTGs. Accordingly, these rules were evaluated against the interpretations of EPA policy found in the Blue Book, referred to in footnote 1, and against other EPA policy. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SJVUAPCD's submitted Rule 4602—Motor Vehicle and Mobile Equipment Coating Operations includes the following major provisions:

- Exempts operations involved with touch-up coating, graphic art, and radiator coating,
- Includes the maximum allowable VOC contents for Group I and II vehicle and equipment coatings,
- Specifies the requirements for using add-on control equipment,
- Includes a list of acceptable methods to apply coatings,
- Limits the VOC content and usage of specialty coatings.

SBCAPCD's submitted Rule 325—Crude Oil Production and Separation includes the following major provisions:

- The conditions under which a tank would be exempt from the standards portion of this rule,
- The control measures required for storage tanks and any produced gas,
- The test methods that are to be used to determine compliance. This includes an alternative test method that is to be used to measure vapor pressure of an oil whose API gravity is less than 20 degrees,
- Details as to how an inspection will be conducted.

SBCAPCD's submitted Rule 326—Storage of Reactive Organic Compound Liquids includes the following major provisions:

- Exempts storange tanks with a capacity of less than 5,000 gallons and storage tanks containing an ROC liquid having a vapor pressure less than 0.5 psia from requirements of this rule,
- Specifies that certain control measures must be in place on the tank in order to control emissions or that vapor loss control devices may be installed,
- Lists the allowable vapor loss control devices,
- Lists the criteria for the closure device on any external or internal floating roof tank,
- Lists the requirements for inspection and reporting.

SCAQMD's submitted Rule 1124—Aerospace Assembly and Component Manufacturing Operations includes the following major provisions:

- Includes a comprehensive list of coatings, their corresponding VOC limits, and the phase-in compliance schedule of when facilities must use coatings that meet certain VOC content limits,
- Includes solvent use, clean-up, and stripping requirements,
- Includes a list of the different acceptable methods to apply coatings that ensure a certain level of transfer efficiency,
- If control equipment is used, it must have a destruction efficiency of at least 95% and a capture efficiency of at least 90%,
- Prohibits a person from requiring the use of any non-compliant coating,
- Requires a person who performs qualification acceptance testing on coatings to submit a status report describing the progress toward the development of coatings that satisfy future compliance dates,
- Lists which facilities and what coatings are exempt from this rule.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SJVUAPCD 4602—Motor Vehicle and Mobile Equipment Coating Operations, SBCAPCD 326—Storage of Reactive Organic Compound Liquids, and SCAQMD 1124—Aerospace Assembly and Component Manufacturing Operations are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

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.

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, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective July 5, 1996, unless, by June 5, 1996, adverse or critical comments are received.

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 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 July 5, 1996.

Regulatory Process

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.

SIP approvals under sections 110 and 301(a) and subchapter I, 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, I certify 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).

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State,

local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this direct-final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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: April 18, 1996.

Felicia Marcus,

Regional Administrator.

Subpart F of 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 F—California

2. Section 52.220 is amended by adding paragraphs (c)(196)(i)(C)(*2*), (215)(i)(A)(*5*), and (225)(i)(D) to read as follows:

§ 52.220 Identification of Plan.

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(c) * * *

(196) * * *

(i) * * *

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(*2*) Rules 325 & 326, adopted on January 25, 1994 and December 14, 1993, respectively.

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(215) * * *

(i) * * *

(A) * * *

(*5*) Rule 1124, adopted January 13, 1995.

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(225) * * *

(i) * * *

(D) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4602, adopted June 15, 1995.

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[FR Doc. 96–11205 Filed 5–3–96; 8:45 am]

BILLING CODE 6560–50–W

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40 CFR Part 52

[OH93–1–7290a; FRL–5467–3]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the Particulate Matter contingency measures State implementation plan (SIP) revisions submitted by the State of Ohio on July 17, 1995. This submittal addresses the Federal Clean Air Act requirement to submit contingency measures for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM) for the areas designated as nonattainment for the PM National Ambient Air Quality Standards (NAAQS). In Ohio, Cuyahoga County and portions of Jefferson County are designated as nonattainment for PM. Contingency measures are emission reductions which are to be implemented, with no further action, in the event that an area fails to meet air quality standards. This submittal would result in an emissions reduction of 34 pounds of PM per hour in Cuyahoga County, and 2.9 pounds of PM per hour in Jefferson County if implementation of the contingency measures becomes necessary.

DATES: This action is effective on July 5, 1996, unless EPA receives adverse or critical comments by June 5, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the revision request are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone David Pohlman at (312) 886–3299 before visiting the Region 5 Office.)

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

FOR FURTHER INFORMATION CONTACT: David Pohlman (312) 886–3299.

SUPPLEMENTARY INFORMATION:

I. Background

In Ohio, Cuyahoga County and portions of Jefferson County are designated as nonattainment for PM and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act. See 56 FR 56694 (Nov. 6, 1991); 40 CFR 81.336. The air quality planning requirements for moderate PM nonattainment areas are set out in subparts 1 and 4 of part D, Title I of the Clean Air Act. The EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Clean Air Act, including those State submittals containing moderate PM nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this action and the supporting rationale.

Those States containing initial moderate PM nonattainment areas were required to submit contingency measures by November 15, 1993 (see 57 FR 13543). This contingency plan supplements the attainment plan, and must include measures that become effective, without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve reasonable further progress (RFP) or to attain the PM NAAQS by the applicable statutory deadline. See section 172(c)(9)of the Clean Air Act and 57 FR 13510–13512 and 13543–13544.

II. Analysis of State Submittal

The Ohio Environmental Protection Agency (OEPA) submitted a requested SIP revision to the EPA with a letter dated July 17, 1995. The submittal

contained Findings and Orders for facilities which identified reasonably available PM emissions reductions as contingency measures pursuant to Ohio Administrative Code Rule 3745–17–14. Specifically, Findings and Orders for the following facilities were included: Ford Motor Company, Cleveland Casting Plant, T & B Foundry Company, International Mill Service, Luria Brothers, United Ready Mix.

A. Procedural Requirements

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing. Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see Section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

The State of Ohio, after providing adequate notice, held a public hearing on May 31, 1995, regarding the PM contingency measures. Following the public hearing, the final Findings and Orders were signed by the Director of the Ohio Environmental Protection Agency (OEPA) on July 10, 1995.

The submittal was reviewed by EPA to determine completeness in accordance with the completeness criteria set out at 40 CFR part 51, appendix V. The submittal was found to be complete and a letter dated July 20, 1995, was sent to the State indicating the completeness of the submittals and the next steps to be taken in the review process.

B. Contingency Measures

The Clean Air Act requires States containing PM nonattainment areas to adopt contingency measures that will take effect without further action by the State or EPA upon a determination by EPA that an area failed to make RFP or to timely attain the applicable NAAQS, as described in section 172(c)(9). See generally 57 FR 13510–13512 and 13543–13544. Pursuant to section 172(b), the Administrator has established a schedule providing that states containing initial moderate PM nonattainment areas shall submit SIP revisions containing contingency measures no later than November 15, 1993. (See 57 FR 13543, n. 3.)

The General Preamble further explains that contingency measures for PM should consist of other available control measures, beyond those necessary to meet the core moderate area control requirements to implement reasonably available control measures and to assure attainment (see Clean Air Act sections 172(c)(1), and 189(a)(1) (A) and (C). Based on the statutory structure, EPA believes that contingency measures must, at a minimum, provide for continued progress toward the attainment goal during an interim period between any prospective determination that the SIP has failed to achieve RFP or provide for timely attainment of the NAAQS and the additional formal air quality planning following the determination (57 FR 13511). PM contingency measures are also addressed in a memo from the Acting Chief of the Sulfur Dioxide/Particulate Matter Programs Branch, Air Quality Management Division to the Air Branch Chiefs of EPA Regions 1–10 dated August 20, 1991. This memo suggests that PM contingency emissions reductions for moderate nonattainment areas should represent one year's RFP. For example, reductions equal to 25 percent of the total reduction in actual emissions in the SIP control strategy would be appropriate for a moderate nonattainment area since the control strategy must generally be implemented within a 3 to 4-year period between SIP development and the attainment date.

Section 172(c)(9) of the Act specifies that contingency measures shall ''take effect * * * without further action by the State, or the [EPA] Administrator.'' EPA has interpreted this requirement (in the General Preamble at 57 FR 13512) to mean that no further rulemaking activities by the State or EPA would be needed to implement the contingency measures. In general, EPA expects all actions needed to effect full implementation of the measures to occur within 60 days after EPA notifies the State of its failure to attain the standard or make RFP.

The EPA recognizes that certain actions, such as notification of sources, modification of permits, etc., may be needed before some measures could be implemented. However, States must show that their contingency measures can be implemented with minimal further administrative action on their part and with no additional rulemaking action such as public hearing or legislative review.

Ohio Administrative Code (OAC) Rule 3745–17–14 (approved by the EPA on May 27, 1994, 59 FR 27464) requires principal facilities in the PM nonattainment areas to submit control strategies and compliance schedules to the OEPA which would reduce particulate emissions by 15 and 25 percent. OAC Rule 3745–17–14 also requires that the control strategies and compliance schedules be approved by the Director of the OEPA (as Findings and Orders) and submitted to the EPA as a revision to the Ohio PM SIP. The rule further specifies that the requirements of the Findings and Orders are to be implemented by each facility upon receipt of a formal determination and notification by the OEPA or the EPA that the area is not in compliance with the NAAQS. Whether the 15 percent or the 25 percent control strategy would be implemented will depend on the severity of any actual violations.

The OEPA received contingency plans from the affected facilities and worked with them to finalize those plans. The OEPA found various situations with respect to the availability of additional particulate emission reductions to meet the levels required in OAC Rule 3745–17–14. Some of the affected facilities do not have any significant reductions of PM emissions available, while others have some available reductions, but not enough to meet the required levels in OAC Rule 3745–17–14. Others have sufficient reductions available to fully meet the requirements. As a result, some affected facilities are not being required to commit to any contingency measure reductions.

The facilities which fully satisfy Rule 3745–17–14, are the Ford Motor Company's Cleveland Casting Plant, and the T & B Foundry Company. Ohio has issued Final Findings and Orders which incorporate the contingency plans for these sources.

The facilities which have some reductions available, but not enough to fully meet the required levels in OAC Rule 3745–17–14 are International Mill Service, Luria Brothers, and United Ready Mix (formerly Harval). Ohio has issued Final Findings and Orders which incorporate the contingency measures. Ohio also submitted fact sheets for these sources which explain why further reductions are not available.

The facilities which have no significant particulate emission reductions that are reasonably available are Granger Materials, Boyas Excavating, Cuyahoga Foundry Company, Drummond Dolomite (formerly Cleveland Builders Supply), Independence Excavating, Kenmore Asphalt Products (formerly Lake Erie Asphalt Products), Ohio Aluminum Industries, Schloss Paving Company, Standard Lafarge Company (formerly Standard Slag Company), Stein, Wheeling-Pittsburgh Steel Corporation (2 facilities: Mingo Junction and Steubenville).

In addition, two facilities, Boyas Excavating, and Satralloy, have shut down. LTV Steel Company (East Side and West Side) will have rule revisions that require no actual emission reductions. EPA guidance calls for contingency measures only in proportion to the actual reductions obtained by the nonattainment area. Because LTV has zero emissions reductions associated with the initial PM attainment plan, it was not required to commit to any contingency measure reductions.

While Ohio's Rule 3745–17–14 requires contingency emission reductions of the magnitude called for by the EPA (25% of the actual reductions in the SIP control plan), it was found that some sources were not able to reasonably obtain such reductions. Ohio carefully analyzed the facilities' contingency plans to ensure that all reasonably available measures are included. The EPA agrees that Ohio has obtained a sufficient level of reductions to provide for a reasonable level of continued progress toward the attainment goal during an interim period between any prospective determination that the SIP has failed to achieve RFP or provide for timely attainment of the NAAQS and the additional formal air quality planning following the determination. Ohio's PM contingency plan is, therefore, approvable by the EPA.

C. Enforceability

All measures and other elements in the SIP must be enforceable by the State and EPA (see Sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). State implementation plan provisions also must contain a program to provide for enforcement of control measures and other elements in the SIP (see section 110(a)(2)(C)).

The Final Findings and Orders issued by OEPA are clearly written, and are legally enforceable by OEPA. The Final Findings and Orders will be enforceable by the EPA upon their approval as a SIP revision. The EPA believes that the State's existing air enforcement program will be adequate to enforce PM contingency plans.

III. Final Action

The EPA approves Ohio's PM contingency measure rules, submitted by OEPA on July 17, 1995. This submittal addressed PM contingency measure plans that were due on November 15, 1993. The State's PM contingency measures are included in Final Findings and Orders issued by the OEPA. Previously approved OAC Rule 3745–17–14 requires that facilities implement the contingency measures upon receipt of a formal determination and notification by the OEPA or the EPA that the area is not in compliance with the NAAQS.

The EPA is publishing this action without prior proposal because EPA views this action as a noncontroversial revision and anticipates no adverse comments. However, EPA is publishing a separate document in this Federal Register publication, which constitutes a ''proposed approval'' of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The ''direct final'' approval shall be effective on July 5, 1996, unless EPA receives adverse or critical comments by June 5, 1996. If EPA receives comments adverse to or critical of the approval discussed above, EPA will withdraw this approval before its effective date by publishing a subsequent Federal Register document which withdraws this final action. All public comments received will then be addressed in subsequent rulemaking. Please be aware that EPA will institute another comment period on this action only if warranted by significant revisions to the rulemaking based on any comments received in response to today's action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, EPA hereby advises the public that this action will be effective on July 5, 1996.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 9, 1995, memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

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

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') (signed into law on March 22, 1995) requires that the EPA 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 one year. Section 203 requires the EPA 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 EPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The EPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the EPA 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 less than $100 million in any one year, the EPA 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 EPA is not required to develop a plan with regard to small governments. This rule only approves the incorporation of existing state rules into the SIP. It imposes no additional 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 subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify 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 Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 5, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: April 19, 1996.

Valdas V. Adamkus,

Regional Administrator.

For the reasons stated in the preamble, 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 KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(109) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(109) On July 17, 1995, Ohio submitted a Particulate Matter (PM) contingency measures State Implementation Plan (SIP) revision request. The submittal includes Final Findings and Orders for 5 companies. The Findings and Orders provide PM emission reductions which will take effect if an area fails to attain the National Ambient Air Quality Standards for PM.

(i) Incorporation by reference.

Director's Final Findings and Orders for Ford Motor Company (Cleveland Casting Plant), T&B Foundry Company, International Mill Service, Luria Brothers, and United Ready Mix, issued by the Ohio Environmental Protection Agency on July 10, 1995.

[FR Doc. 96–11200 Filed 5–3–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[UT18–1–6778a; FRL–5468–8]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Emission Statement Regulation, Ozone Nonattainment Area Designation, Definitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the revision to the Utah State Implementation Plan (SIP) that was submitted by the Governor of Utah on November 12, 1993, for the purpose of implementing an emission statement program for stationary sources within the Salt Lake and Davis Counties (SLDC) ozone nonattainment area. The emission statement inventory regulation, Utah Air Conservation Regulation (UACR) R307–1–3.5.4., was submitted by the State to satisfy the Clean Air Act (CAA), as amended in 1990, requirements for an emission statement program to be part of the SIP for Utah. EPA's approval will serve to make the emission statement inventory regulation federally enforceable. In addition, EPA is approving other minor changes involving definitions in UACR R307–1–1. and the ozone nonattainment area designation definition in UACR R307–1–3.3.3.

EFFECTIVE DATE: This final rule will be effective July 5, 1996, unless adverse comments are received in writing on or before June 5, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: Richard R. Long, Director, Air Program (8P2–A), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday at the following office: United States Environmental Protection Agency, Region 8, Air Program, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Program (8P2–A), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, Telephone number: (303) 312–6479.

SUPPLEMENTARY INFORMATION: Section 110(a)(2)(H)(i) of the CAA provides the State the opportunity to update its SIP as needed or to address new statutory requirements. The State is utilizing this authority of the CAA to include its emission statement inventory regulation as part of the SIP, to revise the ozone nonattainment area designation definition, and perform minor definition changes.

I. Background

The air quality planning and SIP requirements for ozone nonattainment and transport areas are set out in subparts I and II of Part D of Title I of the CAA. EPA previously published a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the CAA (refer to 57 FR 13498, dated April 16, 1992, ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Proposed Rule'', 57 FR 18070, dated April 28, 1992, ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Supplemental; Proposed Rule'', and 57 FR 55620, dated November 25, 1992, ''Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990''). EPA also issued guidance describing the requirements for emission statement programs, as discussed in this action, entitled ''Guidance on the Implementation of an Emission Statement Program'', dated July, 1992.

Section 182 of the CAA sets out a graduated control program for ozone nonattainment areas. Section 182(a) describes requirements applicable to Marginal nonattainment areas. These requirements are also made applicable to all other ozone nonattainment area

classifications through subsections (b), (c), (d), and (e) of section 182. Among the requirements in section 182(a) is a program, described in paragraph (3) of that subsection, for stationary sources to prepare and submit to the State each year emission statements showing actual emissions of volatile organic compounds (VOC) and nitrogen oxides (NO_X). Section 182(a)(3) required States to submit to EPA, by November 15, 1992, a revision to their SIP establishing an emission statement program.

EPA's document ''Guidance on the Implementation of an Emission Statement Program'', dated July, 1992, provided that whatever minimum reporting level is established in a State emission statement program, if either VOC or NO_X is emitted at or above the designated level, the other pollutant must be included in the emission statement even if it is emitted at levels below the specified cutoffs.

Section 182(a)(3)(B)(ii) allows States to waive, with EPA approval, the requirement for an emission statement for classes or categories of sources with less than 25 tons per year of actual plant-wide NO_X or VOC emissions in nonattainment areas if: (1.) the class or category is included in the base year and periodic inventories, and (2.) emissions are calculated using emission factors established by EPA (such as those found in EPA's publication AP–42) or other methods acceptable to EPA.

The emission statement data must include: certification of data accuracy; source identification information; operating schedule; emissions information (to include annual and typical ozone season day emissions); control equipment information; and process data. EPA developed the emission statements data elements so as to be consistent with other source and State reporting requirements. This consistency is essential to assist States with quality assurance for emission estimates and to facilitate consolidation of all EPA reporting requirements.

In addition to the submission of the emission statement data to AIRS, States must provide EPA with a status report that outlines the degree of compliance with the emissions statement program. States must report quarterly to EPA the total number of sources affected by the State's emission statement provisions, the number that have complied with the provisions, and the number that have not. This status report must also include the total annual and typical ozone season day emissions from all reporting sources, both corrected and non-corrected for rule-effectiveness (RE). States must include in their status report a list of sources that are delinquent in submitting their emission statement and that emit 500 tpy or more of VOC or 2500 tpy or more of NO_X. This report must be submitted quarterly until all the regulated sources have complied for the reporting year. The suggested submittal dates for the quarterly status reports are July 1, October 1, January 1, and April 1.

II. Analysis of Utah's Emission Statement Regulation

EPA is approving Utah's rule, UACR R307–1–3.5.4, ''Emission Statement Inventory'', that was submitted by the Governor to EPA on November 12, 1993. This rule provides the necessary requirements for an emission statement program for the State of Utah as stipulated in section 182(a)(3) of the CAA and in EPA's emission statement guidance document entitled ''Guidance on the Implementation of an Emission Statement Program'', dated July, 1992.

1. Administrative. The State of Utah held a public hearing on August 4, 1993, for its Emission Statement Inventory regulation. Following the public hearing, the Emission Statement Inventory regulation was adopted by the State with an effective date of November 15, 1993. This new regulation was submitted to EPA on November 12, 1993, as part of the Ozone Redesignation Request and Maintenance Plan SIP revisions. The State's emission statement inventory regulation was prepared to fulfill one of the requirements of Section 182(b), for Moderate ozone nonattainment areas, of the CAA.

The Ozone SIP revisions were reviewed by EPA to determine completeness, in accordance with the completeness criteria found in 40 CFR Part 51 (as amended by 57 FR 42216 on August 26, 1991). The initial November 12, 1993, submittal was found to be incomplete, and a letter dated January 19, 1994, was sent to the Governor indicating the administrative and technical deficiencies. The State of Utah sued EPA on March 18, 1994, regarding EPA's incompleteness finding (State of Utah v. EPA, Case No. 94–9520). As part of the lawsuit settlement, EPA agreed to allow the State to repackage its submittal and request parallel processing of the appropriate regulations and SIP revisions relating to the Ozone Redesignation Request for Salt Lake and Davis Counties. Therefore, on June 27, 1994, the State submitted: (1) a request for parallel processing of the Ozone Maintenance Plan and, (2) a reorganized Ozone Redesignation SIP revision and Maintenance Plan. Included in the reorganized Ozone Redesignation SIP revision and Maintenance Plan was the Emission Statement Inventory regulation. On the basis of the State's June 27, 1994, submittal, EPA withdrew the January 19, 1994, finding of incompleteness in a letter to the Governor dated July 7, 1994. The July 7, 1994, letter deemed the State to have submitted a complete Ozone Redesignation Request, including a complete Emission Statement Inventory regulation submittal, as of November 12, 1993.

2. Components of an Emission Statement Regulation: There are several components of an acceptable emission statement regulation. Specifically, the State must submit an emission statement regulation as a revision to its SIP. The emission statement regulation must meet the minimum requirements for reporting by the sources and the State. The emission statement regulation must include provisions for applicability, definitions, compliance, and specific source requirements detailed below.

a. Sources Covered. Section 182(a)(3)(B) requires that States with areas designated as nonattainment for ozone require emission statement data from sources of volatile organic compounds (VOC) or oxides of nitrogen (NO_X) in the nonattainment areas. This requirement applies to all ozone nonattainment areas, regardless of the classification (Marginal, Moderate, etc.) and is to be addressed through a SIP revision. This requirement is fulfilled by the State in UACR R307–1–3.5.4.A.

b. Regulation Elements. A State's emission statement regulation must include provisions covering applicability of the regulation, definitions for key terms used in the regulation, a compliance schedule for sources covered by the regulation, and the specific reporting requirements for sources. The emission statement submitted by the source should contain a certification that the information is accurate to the best knowledge of the individual certifying the statement, identification information (name, physical location, mailing address of the facility, latitude and longitude, and 4-digit Standard Industrial Classification (SIC) code(s)), operating schedule information (annual throughput, days per week on the normal operating schedule, hours per day during the normal operating schedule, and hours per year on the normal operating schedule), process rate data (annual process rate (annual throughput) and peak ozone season daily process rate), control equipment information (current primary and secondary control equipment identification codes and current combined control equipment

efficiency (%)), emissions information (estimated actual VOC and NO_X emissions at the segment level (in tons per year for an annual emission rate and pounds per day for a typical ozone season day), estimated emissions method code, calendar year for the emissions, and emission factor (if used)). The above requirements are fulfilled by the State in UACR R307–1–3.5.4.B., UACR R307–1–3.5.4.C., and UACR R307–1–3.5.4.D.

c. Reporting Requirements for Sources. Sources covered by Utah's Emission Statement Inventory regulation must submit the data elements described under Regulation Elements in section 2.b. above. The State addressed this requirement in UACR R307–1–3.5.4.

d. Reporting Requirements for State. States must: (1) provide to EPA the information for the sources covered by the emission statement regulation, (2) provide the value for rule effectiveness utilized by the State in its calculations, (3) submit quarterly emission statement status reports. The quarterly reports should show the total number of facilities that met the State's emission statement regulation requirements and the number of facilities that failed to meet the requirements. The above State reporting requirements were not initially addressed in the State's submittal. In a letter dated April 21, 1995, from Douglas Skie, Chief, Air Programs Branch, to Russell Roberts, Director, Utah Division of Air Quality, EPA requested the State to commit to providing the above information in quarterly status reports. The necessary format was provided in this letter. In a letter dated May 30, 1995, from Russell Roberts, Director, Utah Division of Air Quality to Douglas Skie, Chief, Air Programs Branch, the State committed to provide the requested information.

III. Nonattainment Area Designation and Other Minor Definition Changes

The State of Utah held a public hearing on September 1, 1993, for, among other items, the ozone ''nonattainment area designation'' definition change. Following the public hearing, the ozone ''nonattainment area designation'' definition change was adopted by the State with an effective date of November 13, 1993. UACR R307–1–3.3.3C was changed from ''Ozone Nonattainment Areas'' to ''Ozone Nonattainment Areas and Davis and Salt Lake Counties''. The other minor changes involved several definitions found in UACR R307–1–1., ''Forward and Definitions''. These other minor changes were administratively addressed in conjunction with the Emission Statement Inventory regulation in the August 4, 1993, public hearing and also became effective on November 15, 1993.

IV. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA. Under section 110(a)(2)(E)(iii) of the Act the State must provide the necessary assurances that the State has the authority to implement the SIP. The State has such authority, for the implementation of the emission statement inventory regulation, UACR R307–1–3.5.4., revision of the ozone nonattainment area designation definition, UACR R307–1–3.3.3C, and other minor changes to definitions in UACR R307–1–1., as found in the Utah Air Conservation Act, Chapter 2, Sections 19–2–101, 19–2–104, and 19–2–109.

Final Action. EPA is approving the following revision to Utah's SIP as was submitted by the Governor on November 12, 1993: Emission Statement Inventory regulation, UACR R307–1–3.5.4, ozone nonattainment area designation definition, UACR R307–1–3.3.3C, and the following definitions in UACR R307–1–1.; ''Control Apparatus'', ''Emissions Information'', ''Peak Ozone Season'', ''Process Level'', and ''Process Rate''.

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 this Federal Register publication, EPA is proposing to approve the SIP revisions should adverse comments be filed. This action will be effective July 5, 1996, unless, by June 5, 1996, adverse comments are received.

If EPA receives adverse 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 final rule based on this action serving as a proposed rule. 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.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to any 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.

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

SIP approvals under Section 110 and Subchapter I, Part D of the 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, I certify that it does not have significant impact on any small entities. 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).

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 July 5, 1996. Filing a petition for reconsideration by the Administrator for 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) of the CAA).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also

require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments to the Clean Air Act enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements.

Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 29, 1995.

Jack W. McGraw,

Acting Regional Administrator.

40 CFR part 52, Subpart TT, 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 TT—Utah

2. Section 52.2320 is amended by adding paragraph (c)(34) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(34) Revisions to the Utah State Implementation Plan for the Emission Statement Inventory regulation, UACR R307–1–3.5.4., revision of the ozone nonattainment area designation definition, UACR R307–1–3.3.3C, and other minor changes to definitions in UACR R307–1–1. were submitted by the Governor in a letter dated November 12, 1993.

(i) Incorporation by reference.

(A) Emission Statement Inventory regulation, UACR R307–1–3.5.4, ozone nonattainment area designation definition, UACR R307–1–3.3.3C, and the following definitions in UACR R307–1–1.; ''Control Apparatus'', ''Emissions Information'', ''Peak Ozone Season'', ''Process Level'', and ''Process Rate''. All were adopted on August 4, 1993, and became effective on November 15, 1993.

(B) A letter dated May 30, 1995, from Russell Roberts, Director, Utah Division of Air Quality to Douglas Skie, Chief, Air Programs Branch for Region 8.

Editorial note: This document was received at the Office of the Federal Register May 1, 1996.

[FR Doc. 96–11198 Filed 5–3–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[CA 140–10–7261a; FRL–5456–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Placer County Air Pollution Control District and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions concern rules from the following districts: the Placer County Air Pollution Control District (PCAPCD) and the Ventura County Air Pollution Control District (VCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules control VOC emissions from the storage and transfer of organic liquids and tank degassing operations. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: This action is effective on July 5, 1996 unless adverse or critical comments are received by June 5, 1996. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

Placer County Air Pollution Control District, 11464 B Avenue, Auburn, CA 95603.

Ventura County Air Pollution Control District, Rule Development Section, 669 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Duane F. James, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1191, email: james.duane@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being approved into the California SIP include: the PCAPCD's Rule 212, ''Storage of Organic Liquids,'' and Rule 215, ''Transfer of Gasoline into Tank Trucks, Trailers and Railroad Tank Cars at Loading Facilities,'' and the VCAPCD's Rule 74.26, ''Crude Oil Storage Tank Degassing Operations,'' and Rule 74.27, ''Gasoline and ROC Liquid Storage Tank Degassing Operations.'' These rules were submitted by the California Air Resources Board (ARB) to EPA on January 24, 1995 (Rules 215, 74.26, and 74.27) and October 13, 1995 (Rule 212).

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included portions of Placer County in the Sacramento Metro Area and the Ventura County Area. 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that

the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991, for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Sacramento Metro Area and the Ventura County Area are classified as severe;[2] therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on January 24, 1995, and October 13, 1995, including the rules being acted on in this document. The PCAPCD adopted Rule 212 on June 8, 1995, and Rule 215 on November 3, 1994, and the VCAPCD adopted Rules 74.26 and 74.27 on November 8, 1994. These submitted rules were found to be complete on February 24, 1995 (Rules 215, 74.26, and 74.27) and November 28, 1995 (Rule 212), pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[3] and are being finalized for approval into the SP.

The PCAPCD's Rule 212 requires facilities to install and operate vapor loss control devices for the storage of organic liquids with vapor pressures of 0.5 psia or higher, and Rule 215 requires vapor collection and disposal systems for loading gasoline into tank trucks, trailers, or railroad tank cars. The VCAPCD's Rules 74.26 and 74.27 reduce emissions of VOCs from the degassing of crude oil, produced water, gasoline, and VOC liquid storage tanks. VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted as part of the PCAPCD's and the VCAPCD's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for these rules.

EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to ''fix-up'' their RACT rules. See section 182(a)(2)(A). The CTGs applicable to PCAPCD's Rule 212 are entitled ''Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks (EPA–450/2–77–036)'' and ''Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks (EPA–450/2–78–047).'' The CTGs applicable to PCAPCD's Rule 215 are entitled, ''Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals (EPA–450/2–77–026),'' ''Control of Volatile Organic Emissions from Bulk Gasoline Plants (EPA–450/2–77–035),'' and ''Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems (EPA–450/2–78–051).'' There are no CTGs applicable to VCAPCD's Rules 74.26 and 74.27. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

The PCAPCD's submitted Rule 212, ''Storage of Organic Liquids,'' includes the following significant changes from the current SIP:

- The Table of Content's reference to section 110 has been deleted because that section was deleted in the previous version of the rule.
- There were two sections 503.1. The second was renumbered to 503.2.

The PCAPCD's submitted Rule 215, ''Transfer of Gasoline into Tank Trucks, Trailers and Railroad Tank Cars at Loading Facilities,'' includes the following significant changes from the current SIP:

- The rule's applicability was broadened.
- The definitions of bulk plant and bulk terminal were added to the rule. The definition of volatile organic compound (VOC) was updated for consistency with 40 CFR 51.100(s).
- An emission standard of 0.6 pounds of VOC per 1000 gallons of gasoline transferred was added for bulk plants.
- The ARB's Methods 202 and 203 were added to the rule for equipment certifications.

The VCAPCD's Rule 74.26, ''Crude Oil Storage Tank Degassing Operations,'' and Rule 74.27, ''Gasoline and ROC Liquid Storage Tank Degassing Operations,'' are new rules that reduce the emissions of VOCs from the degassing of crude oil, produced water, gasoline, and VOC liquid storage tanks. The rules require a vapor destruction and removal efficiency of at least 95% until the vapor concentration in the tank is 10% of its initial concentration or less than 10,000 parts per million volume (ppmv). Records of the inlet and outlet concentration are to be made at the beginning of and throughout the test. Records of temperature are required when refrigerated condensers are used. All records must be maintained for two years from the date of entry. ASTM Methods D 323–82, D 2879–86 and E 260–91 and EPA Methods 2A, 21, and 25A are the test methods used for compliance determinations. A more detailed discussion of the controls required and the justification for why

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice'' (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Sacramento Metro Area was reclassified from serious to severe on June 1, 1995. See 60 FR 20237 (April 25, 1995). The Ventura County Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

these controls represent RACT can be found in the Technical Support Documents (TSDs) for Rules 74.26 and 74.27, dated November 7, 1995.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, the PCAPCD's Rule 212, ''Storage of Organic Liquids,'' and Rule 215, ''Transfer of Gasoline into Tank Trucks, Trailers and Railroad Tank Cars at Loading Facilities,'' and the VCAPCD's Rule 74.26, ''Crude Oil Storage Tank Degassing Operations,'' and Rule 74.27, ''Gasoline and ROC Liquid Storage Tank Degassing Operations,'' are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

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.

EPA is publishing this document 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, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective July 5, 1996, unless, by June 5, 1996, adverse or critical comments are received.

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 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 July 5, 1996.

Regulatory Process

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.

SIP approvals under sections 110 and 301(a) and subchapter I, 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, I certify 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).

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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: March 11, 1996.

Felicia Marcus,

Regional Administrator.

Subpart F of 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 F—California

2. Section 52.220 is amended by adding paragraphs (c)(214)(i)(D)(2) and (E) and (c)(225)(i)(B)(2) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(214) * * *

(i) * * *

(D) * * *

(*2*) Rule 74.26 and Rule 74.27, adopted on November 8, 1994.

(E) Placer County Air Pollution Control District.

(*1*) Rule 215, adopted on November 3, 1994.

* * * * *

(225) * * *

(i) * * *

(B) * * *

(*2*) Rule 212, adopted on June 8, 1995.

* * * * *

[FR Doc. 96–11210 Filed 5–03–96; 8:45 am]

BILLING CODE 6560–50–W

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40 CFR Part 52

[IL129–1–7046a; FRL–5464–8]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: On March 14, 1995, the Illinois Environmental Protection

Agency (IEPA) formally submitted three federally enforceable State operating permits (FESOPs) to the United States Environmental Protection Agency (USEPA). These permits contained enforceable sulfur dioxide (SO_2) emission limitations for three industrial facilities in the Granite City area of Madison County, Illinois. The limitations are intended to address modeled violations of the SO_2 National Ambient Air Quality Standards (NAAQS). USEPA has determined that the three FESOPs are adequate as revisions to Illinois' State Implementation Plan (SIP) for sulfur dioxide (SO_2) as it applies to Madison County, and as such, address the previously modeled violations of the SO_2 NAAQS.

DATES: This action will be effective on July 5, 1996 unless adverse or critical comments not previously addressed by the State or USEPA are received by June 5, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal and USEPA's analysis (Technical Support Document) are available for inspection at the following location: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Mary Onischak at (312) 353–5954 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Mary Onischak at (312) 353–5954.

SUPPLEMENTARY INFORMATION:

I. Background

On September 22, 1992 (57 FR 43846), USEPA proposed to designate portions of Madison County, Illinois, including the Granite City area (Granite City and Nameoki Townships) as nonattainment for SO_2. This proposed designation was based on modeled violations of the SO_2 NAAQS. On December 21, 1993 (58 FR 67336), USEPA published its intent to defer the final SO_2 designation of Madison County, Illinois while the State worked to revise its SO_2 SIP. On March 14, 1995, Illinois submitted a SO_2 SIP revision request which consisted of SO_2 emission limitations for three facilities in Madison County: the Nestle Beverage Company (Nestle), Reilly Industries (Reilly), and the Granite City division of the National Steel Corporation (Granite City Steel). Illinois' submittal, including background information, demonstration of attainment, and enforceability is discussed further in the technical support document.

II. Emission Limitations

A. Nestle Beverage Company

Nestle's FESOP covers three sources: the Nebraska boiler, Boiler Number 5, and the tea leaf burner. Both boilers normally use natural gas, but have the capability of burning fuel oil as well. The tea leaf burner combusts ''spent'' tea leaves, with natural gas or oil as support fuels. The FESOP conditions require that Nestle's fuels, except for the tea leaves, must all meet a fuel quality rating of 0.30 pounds SO_2 per million British Thermal Units (lb/MMBTU), on an hourly basis. The SO_2 and particulate emissions from the tea leaf burner are controlled by a flue gas desulfurization unit, and the tea leaf burner's SO_2 emissions must not exceed 0.30 lb/MMBTU, regardless of the fuel burned. After April 1, 1996, the SO_2 emissions of the tea leaf burner are to be measured and recorded hourly, using a continuous emissions monitoring (CEM) system.

B. Reilly Industries

Reilly Industries emits SO_2 from seven Stills. The facility normally uses natural gas at these Stills, but keeps a supply of fuel oil as a backup fuel. The facility originally was allowed to use residual fuel oil, which the State of Illinois limits to 1.0 lb/MMBTU of SO_2 [35 IAC 214.161(a)]. Under the new FESOP requirements, the facility must burn only natural gas or distillate fuel oil, resulting in SO_2 emissions of no more than 0.30 lb/MMBTU. Fuel which would lead to emissions greater than 0.3 lb/MMBTU may not be burned by the facility.

C. Granite City Steel

While most combustion units at Granite City Steel are primarily fueled by natural gas, the plant maintains the ability to use several different fuels: natural gas, blast furnace gas, fuel oil, and coke oven gas (COG). Natural gas and blast furnace gas do not cause significant emissions of SO_2. Fuel oil, which contains sulfur, is primarily used as a backup fuel. COG is produced at the facility and must either be used as fuel or destroyed in a flare because it cannot be stored at the site. Granite City Steel requested to be allowed adequate flexibility to make use of the COG it generates. The COG contains hydrogen sulfide (H_2S), which converts to SO_2 during combustion.

The Granite City Steel FESOP imposes daily and annual SO_2 emission caps on certain combustion units and unit groups at the facility, with additional 3-hour emission caps on some units. Although certain sources have been restricted to the use of natural gas alone, or have been prohibited from using fuel oil, the SO_2 emission caps are generally independent of the fuel types used. Granite City Steel continuously monitors its COG flow and COG sulfur content for the calculation of SO_2 emissions for compliance purposes. The Granite City Steel FESOP limits were developed based on modeling which tested both the company's most frequent fuel routing and worst-case fuel routing.

III. Air Quality Analysis

The SO_2 emission limits in the FESOPs for the three Madison County facilities were all supported by air dispersion modeling. Illinois used the Industrial Source Complex long- and short-term models with the regulatory default options. The Granite City area is considered rural, so rural dispersion coefficients were used. Other nearby sources were explicitly modeled in addition to the three FESOP sources. Worst-case building dimensions were used for downwash impacts. A reduced load screening analysis was performed to determine the source operating rates that resulted in maximum ambient impact. The receptor arrays had a resolution of 100 meters in the areas of concern and at the fencelines, and because the sources are near the border of Illinois and Missouri, interstate impacts were taken into account. Five years of meteorological data from St. Louis were used, and background concentrations were added to the final ambient SO_2 concentration predictions.

The dispersion modeling study was used as a tool for developing the SO_2 emission limits at these sources. Setting and modeling the emission limits for Nestle and Reilly was fairly straightforward, but setting Granite City Steel's emission limits presented a challenge. Because there are many different emission scenarios possible at Granite City Steel, IEPA considered the relative impacts from each source group separately. Illinois performed many modeling tests to evaluate the different operating scenarios. Emission limits were placed on the source groups so that any operation scenario used at the facility could be expected to protect the SO_2 NAAQS. The final 3-hour, 24-hour, and annual modeling runs, which included all the Granite City area SO_2 sources and background concentrations, showed that the entire Granite City area would attain the NAAQS for SO_2.

USEPA has reviewed this modeling and determined that it is acceptable. For further documentation of the dispersion modeling, see the technical support document.

IV. Enforceability

Illinois established a set of specific recordkeeping and reporting requirements as conditions within a federally enforceable operating permit for the three Granite City facilities. On December 17, 1992 (57 FR 59928) Illinois' operating permit program was approved by USEPA and incorporated into the Illinois SIP. Permits issued under this federally enforceable State operating permit program may serve as part of the SIP and may be used to address certain SIP deficiencies.

The FESOP for Nestle (Application No. 94110119) was issued on March 8, 1995. The FESOP for Reilly (Application No. 94040131) was issued on February 24, 1995. The Granite City Steel FESOP (Application No. 94120017) was issued on March 7, 1995. The permits were given public notice and were made available for public comment. The conditions of the permits effectively limit emissions of sulfur dioxide from the affected sources.

V. Final Rulemaking Action

The USEPA has determined that Illinois' March 14, 1995, SO_2 SIP revision submittal satisfies section 110(A)(2) of the Clean Air Act and is fully approvable. The FESOPs for Nestle, Reilly, and Granite City Steel are expected to rectify the modeled ambient air quality violations identified previously. USEPA's September 22, 1992 (57 FR 43846) proposed redesignation of the Granite City area of Madison County, Illinois, is rendered moot as a consequence of this approval.

The USEPA is publishing this action without prior proposal because USEPA views this action as a noncontroversial revision and anticipates no adverse comments. However, the rulemaking will not be deemed final if timely unaddressed adverse or critical comments are filed. The ''direct final'' approval shall be effective on July 5, 1996, unless USEPA receives such adverse or critical comments by June 5, 1996. The USEPA is now soliciting public comments on this action. Any parties interested in commenting on this action should do so at this time. In the proposed rules section of this Federal Register, USEPA is publishing a separate document which constitutes a ''proposed approval'' of the requested SIP revision. If warranted by comments adverse to or critical of the approval discussed above, which have not been addressed by the State or USEPA, USEPA will publish a Federal Register document which withdraws the final action. The USEPA will then address public comments received in a subsequent rulemaking document based on the proposed approval.

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

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA 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, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify 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 Clean Air Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, requires that the USEPA 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 one year. Section 203 requires the USEPA 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 USEPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The USEPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the USEPA explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

This rule only approves the incorporation of existing state rules into the SIP. It imposes no additional requirements. Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less then $100 million in any one year, the USEPA 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 USEPA is not required to develop a plan with regard to small governments.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 5, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Sulfur oxides.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 18, 1996.

David Kee,

Acting Regional Administrator.

[FR Doc. 96–11196 Filed 5–3–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD–FRL–5465–9]

Clean Air Act Interim Approval of Operating Permits Program; State of Rhode Island

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is promulgating source category-limited interim approval of the Operating Permits Program submitted by the State of Rhode Island for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

DATES: This action will become effective July 5, 1996 unless notice is received by June 5, 1996 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments should be addressed to Ida E. Gagnon, Air Permits, CAP, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203–2211.

Copies of the State's submittal and other supporting information relevant to this action are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 1, One Congress Street, 11th floor, Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: Ida E. Gagnon, Air Permits, APO, U.S. Environmental Protection Agency, Region 1, JFK Federal Building, Boston, MA 02203–2211, (617) 565–3500.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) Part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these 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, and where a state requests source category-limited interim approval, EPA may grant the program interim approval for a period of up to 2 years. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial program and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing source category-limited interim approval of the Operating Permit Program submitted by the State of Rhode Island should adverse or critical comments be filed. This action will be effective July 5, 1996 unless adverse or critical comments are received by June 5, 1996.

If EPA receives such comments, this action will be withdrawn before the effective date by simultaneously 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 on July 5, 1996.

B. Federal Oversight

When EPA promulgates this source category-limited interim approval, it will extend for two years following the effective date, and cannot be renewed. During the interim approval period, the State of Rhode Island is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal permits program for the State of Rhode Island. Permits issued under a program with interim approval have full standing with respect to part 70, and the state will permit sources based on the transition schedule submitted with the source category-limited interim approval request. This schedule may extend for no more than five years beyond the interim approval date.

II. Proposed Action and Implications

A. Analysis of State Submission

1. Support Materials

The Governor of the State of Rhode Island submitted an administratively complete title V Operating Permits Program (PROGRAM) on June 20, 1995. EPA deemed the PROGRAM administratively complete in a letter to the Governor dated on July 28, 1995. The PROGRAM submittal includes a legal opinion from the Attorney General of Rhode Island stating that the laws of the State provide adequate authority to carry out the PROGRAM, and a description of how the State intends to implement the PROGRAM. The submittal additionally contains evidence of proper adoption of the PROGRAM regulations, permit application forms, a data management system and a fee adequacy demonstration.

2. Regulations and Program Implementation

The State of Rhode Island has submitted Air Pollution Control Regulation No. 29 entitled ''Operating Permits'' for implementing the State part 70 program as required by 40 CFR 70.4(b)(2). Sufficient evidence of procedurally correct adoption is included in Section IV of the submittal.

The Rhode Island operating permits regulations follow part 70 very closely. The following requirements, set out in EPA's part 70 operating permits program review are addressed in Section IV of the State's submittal.

The Rhode Island PROGRAM, including the operating permit regulations, meet the requirements of 40 CFR part 70.2 and 70.3 with respect to applicability; parts 70.4, 70.5 and 70.6 with respect to permit content and operational flexibility; part 70.5 with respect to complete application forms and criteria which define insignificant activities; part 70.7 and 70.8 with respect to public participation, minor permit modifications and permit review by affected states and EPA; and 70.11 with respect to requirements for enforcement authority.

Part 70 of the operating permits regulation requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviation likely to occur and the applicable requirements. The State of Rhode Island has not defined ''prompt'' in its program with respect to reporting of deviations. Although the permit program regulations should

define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. The EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under § 70.6(a)(3)(iii)(A). Rhode Island committed in their rule to define ''prompt'' in the individual permit. See Section 29.6.4(b)(2). Where ''prompt'' is defined in the individual permit but not in the program regulations, EPA may veto permits that do not contain sufficiently prompt reporting of deviations.

In connection with the direct final rulemaking notice promulgating interim approval of the Operating Permits Program submitted by the Commonwealth of Massachusetts, EPA listed the definition of ''prompt'' as an issue. On March 4, 1996, EPA received a comment from the National Environmental Development Association's Clean Air Regulatory Project (NEDA/CARP) regarding this definition. NEDA/CARP has asked that we address this comment on record for the Rhode Island program so that they need not resubmit the comment to preserve their right to petition for review on this issue.

NEDA/CARP disagrees with EPA's statement that ''prompt reporting [of deviations] must be more frequent than the semi-annual reporting requirement, given this is a distinct reporting obligation under § 70.6(a)(3)(iii)(A).'' NEDA/CARP believes there is no legal basis for such a statement. Therefore, NEDA/CARP asserts EPA has no basis for expecting deviations to be reported more often than every 6 months.

EPA disagrees that there is no legal basis for this statement. Section 503(b)(2) of the Act requires a permittee ''to promptly report any deviations from permit requirements to the permitting authority.'' This requirement to report deviations promptly is distinct from section 504(a) of the Act which requires the results of all monitoring to be submitted no less often than every six months. The Act clearly distinguishes between the routine semi-annual reporting of all monitoring, whether or not deviations have occurred, from the requirement to report deviations that may be violations of the Act and that at least provide an indication of potential compliance problems. It makes sense that Congress would expect permittees to report potential Act violations more quickly than routine monitoring that confirms compliance. Additionally, the statute has a clear requirement for prompt reporting of deviations, and EPA believes that six months is not prompt when dealing with information that may document a violation of the Clean Air Act.

Rhode Island's definition of ''title I modification'' does not include changes reviewed under a minor source preconstruction review program (''minor NSR changes''). In an August 29, 1994 rulemaking proposal, EPA explained its view that the better reading of ''title I modifications'' includes minor NSR. However, the Agency solicited public comment on whether the phrase should be interpreted to mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under Title I of the Act. (59 FR 44572, 44573). This would include State preconstruction review programs approved by EPA as part of the State Implementation Plan under section 110(a)(2)(C) of the Clean Air Act.

The EPA has not yet taken final action on the August 29, 1994 proposal. However, in response to public comment on that proposal, the Agency has decided that the definition of ''title I modifications'' is best interpreted as not including changes reviewed under minor NSR programs. EPA included this interpretation in a supplemental rulemaking proposal published on August 31, 1995. 60 FR 45530, 545–546. Thus, EPA expects to confirm that Rhode Island's definition of ''title I modification'' is fully consistent with part 70.

In the event EPA ultimately changes the position proposed on August 31, 1995, EPA expects to grant Rhode Island interim approval as to this issue. In the August 29, 1994 proposal (59 FR 44572) the Agency stated that if, after considering the public comments, it determined that the phrase ''title I modifications'' should be interpreted as including minor NSR changes, it would revise the interim approval criteria as needed to allow states with a narrower definition to be eligible for interim approval. If EPA should conclude, during this rulemaking, that Title I modifications should be read to include minor NSR, it will identify the narrow definition of Title I modification as an interim approval condition on Rhode Island's program.

RI DEM defines research and development (R&D) in a manner which allows DEM to exclude research and development operations from a source when determining if the source is major. See § 29.2.4. EPA has recently announced an interpretation of its Part 70 regulation which would allow most R&D facilities to be considered separately from the source, and has proposed rule changes to Part 70 to clarify the Agency's intent. See 60 FR 45556–45558 (Aug. 31, 1995).

This interpretation of EPA's rule is generally consistent with Rhode Island's separation of R&D activities from the source in Section 29.2.4. In section 29.1.32, Rhode Island includes pilot plants in its definition of R&D operations in a manner that might appear inconsistent with the discussion of pilot plants in EPA's recent proposal. See 60 FR 45557. However, section 29.1.32 specifically states that ''Development shall not include production for sale of established products through established processes; nor shall it include production for distribution through market testing channels.'' This is consistent with the discussion of pilot plants in the August 31, 1995 proposal since production for commerce is not permitted by the Rhode Island regulation.

RI DEM is requesting a source-category limited interim approval of its operating permits program. The EPA can grant source category-limited interim approval to states whose programs do not provide for permitting all required sources if the state makes a showing that two criteria are met: (1) That there are ''compelling reasons'' for the exclusions and (2) that all required sources will be permitted on a schedule that ''substantially meets'' the requirements of part 70. Rhode Island intends to permit all subject sources within five years of initial program approval. Over 70% of the sources which account for 80% of the emissions will be issued permits during the first three years. This may extend beyond 1999, which is the final date announced for phase-ins in the interim approval guidance dated August 2, 1993, entitled ''Interim Title V Program Approvals.'' This cutoff date was selected because it is five years after the date required for EPA final action on a timely-submitted, approvable program. Although Rhode Island will not have permitted all sources by this date, it will have done so by 2001, five years from EPA program approval. Additionally, Rhode Island will have permitted over 70% of its sources by November, 1999. EPA believes this schedule substantially

meets the implementation schedule in section 503(c) of the Act.

Rhode Island identified 211 sources whose emissions based on 1993 inventory total 13,171 tons. This is an average of 62 tons per source. This is an extremely small inventory to provide the funding needed to develop, administer and enforce an operating permit program. The DEM initially estimates that the dollar per ton charge necessary to provide funding for a fully staffed operating permit program would be $117.00, substantially higher that the presumptive national average permitting fee provided for in title V and Part 70. The regulated community in Rhode Island has argued that these disproportionately higher fees put them at an economic disadvantage with their competitors in other states. A source category-limited interim approval would allow Rhode Island a longer period of time to build up to full staffing levels. This in turn translates to a more gradual increase in fees and allows the source population additional time to budget for these higher fees. EPA considers the above reasons to be compelling for granting this type of interim approval.

Additionally, Rhode Island demonstrates that all sources required to be permitted under Part 70 will be permitted on a 5 year schedule that substantially meets the requirements of part 70.

Because of this 5 year schedule, EPA is granting interim approval to the Rhode Island program rather than full approval. Pursuant to section 502(g) of the Act, Rhode Island would be authorized to implement the program for a period of two years following EPA's interim approval of the program. Normally, with interim approval, a state must submit a corrective program in order to receive full approval. Rhode Island's program is fully approvable, however, with the exception that they will be issuing permits within a five-year schedule, rather than the 3 year schedule in 503(c) of the Act. Moreover, DEM has submitted its complete 5 year transition plan with the program, so there is no corrective action for DEM to take to make the program fully approvable. Consequently, Rhode Island's program will automatically convert to full approval without any further rulemaking from EPA as long as Rhode Island issues permits in a timely fashion consistent with its 5 year transition plan. Section 502(g) of the Act giving interim approvals does not speak directly to this situation, and appears to assume that a state would always have to cure a program granted interim approval. On the other hand, the combination of sections 502(f) and 502(g) allow for interim approval of partial programs that issue permits on a 5 year schedule. Where a state submits a reasonable 5 year schedule with an otherwise fully approvable program, EPA believes it would be a futile exercise to require some further submission from the state or action from EPA to fully approve the program. EPA is interpreting this gap in the statutory structure of title V to allow for automatic conversion to full approval, and asks for comments from any party that objects to this rationale.

The complete program submittal and the TSD dated January 11, 1996 entitled ''Technical Support Document—Rhode Island Operating Permits Program'' are available in the docket for review. The TSD includes a detailed analysis, including a program checklist, of how the State's program and regulations compare with EPA's requirements and regulations, and also includes an important analysis of how operational flexibility and permit shield provisions in Section 29.11.1(c) of Rhode Island's rule operate as a matter of federal law.

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permit program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that the fees collected exceed $25 per ton of actual emissions per year, adjusted from the August, 1989 consumer price index. The $25 per ton was presumed by Congress to cover all reasonable direct and indirect costs to an operating permit program. This minimum amount is referred to as the ''presumptive minimum.''

Rhode Island has opted to make a presumptive minimum fee demonstration. In the fee regulation, the State proposes an emission based fee for calculating the operating permit program fees for the first four years of the program. The fee structure consists of payment of a fixed fee for the first eighteen months of the program. The fixed fee shall be based on the sources actual emissions for the 1993 calendar year. Beginning in July 1996, annual emissions fees will be a fixed fee for sources with actual emissions below 10 tons per year and above that threshold fees will be assessed on a dollar per ton basis. All regulated pollutants will be assessed at the same rate. This fee is equivalent to at least the part 70 presumptive minimum fee of $25 per ton of regulated air pollutants, adjusted per the consumer price index (CPI). Using Rhode Island's emission based fee approach, the State will collect $35.00 per ton for the period of January 1995 through December 1995 and for the State fiscal year 1996, the equivalent dollar per ton charge is $48.09. The projected dollar per ton charge for the fiscal years 1997 through 2001 are $101.00, $117.00, $121.00, $125.00, and $132.00 respectively, consistent with the schedule for phasing in the full program, as described above. Rhode Island's projected rate is above the presumptive minimum adjusted by the CPI. The fee rate will be reviewed every year and adjusted as necessary to reflect staffing and resource needs, permit program efficiency and cost requirements.

Therefore, Rhode Island has demonstrated that the state is collecting sufficient permit fees to meet EPA's presumptive minimum criteria. For more information, see Section VIII of Rhode Island's title V program.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or Commitments for Section 112 Implementation

Rhode Island has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in Rhode Island's enabling legislation and in regulatory provisions defining ''applicable requirements'' and stating that the permit must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow Rhode Island to issue permits that assure compliance with all section 112 requirements and carry out all section 112 activities at permitted facilities.

Therefore, EPA is interpreting the State of Rhode Island's legal authority and commitments to be sufficient to allow the State to issue permits that assure compliance with all section 112 requirements, and to carry out all section 112 activities at permitted facilities. For further rationale on this interpretation, please refer to the Technical Support Document referenced above and the April 13, 1993 guidance memorandum titled ''Title V Program Approval Criteria for Section 112 Activities,'' signed by John Seitz, Director of the Office of Air Quality Planning and Standards.

b. Implementation of 112(g) Upon Program Approval

On February 14, 1995 EPA published an interpretive notice (see 60 FR 8333) that postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The section 112(g) interpretive notice explains that EPA is still 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) Rhode Island must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations. EPA believes that Rhode Island can utilize its preconstruction permitting program to serve as a procedural vehicle for implementing the section 112(g) rule and making these requirements Federally enforceable between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations. For this reason, EPA is approving Rhode Island's preconstruction permitting program found in Regulation No.9 under the authority of title V and part 70 solely for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations.

Since the approval would be for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval would be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. Also, since the approval would be for the limited purpose of allowing the State sufficient time to adopt regulations, EPA proposes to limit the duration of the approval to 18 months following promulgation by EPA of its section 112(g) rule.

c. Program for Straight Delegation of Sections 111 and 112 Standards

Requirements for operating permit program approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 General Provision Subpart A and standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also granting approval of the State's program under section 112(l)(5) and 40 CFR Parts 63.91 for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated, and to delegate existing standards under 40 CFR parts 61 and 63 as indicated in Table 1 as they apply to title V sources.[1] In addition, in a letter dated April 4, 1996, EPA is approving a Memorandum of Agreement (MOA) granting to the DEM delegation of authority to administer and enforce those NSPS listed in Table 2 as they apply to title V sources.[2]

Rhode Island in Section X of its Title V submittal informed EPA that it commits to adopt, as deemed necessary by EPA, and implement through existing state law and regulations, future requirements of section 112. Therefore, as required by EPA, Rhode Island Department of Environmental Protection will implement Section 112 through their existing rules and adopt new rules as necessary.

Rhode Island has informed the EPA that it intends to accept future delegations of section 111 and 112 standards by checking the appropriate boxes on a standardized checklist. The checklist will list applicable regulations and will be sent by the EPA Regional Office to Rhode Island. Rhode Island will accept delegation by checking the appropriate box and returning the checklist to EPA Region I. The details of this delegation mechanism have been set forth in an agreement between Rhode Island and EPA in a letter dated April 4, 1996. This program will apply to both existing and future standards but is limited to sources covered by the part 70 program.

[1] The radionuclide National Emission Standards for Hazardous Air Pollutant (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of ''major'' for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. The EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

[2] Please note that federal rule making is not required for delegation of section 111 standards. EPA is publishing this table for informational purposes.

d. Commitment To Implement Title IV of the Act

Rhode Island has committed to take action, following promulgation by EPA of regulations implementing section 407 and 410 of the Act, or revisions to either part 72, 74, or 76 or the regulations implementing section 407 or 410, to either incorporate by reference or submit, for EPA approval, Rhode Island Department of Environmental Management (DEM) regulations implementing these provisions.

B. Direct Final Actions

The EPA is promulgating source category-limited interim approval of the operating permits program submitted to EPA by the State of Rhode Island on June 20, 1995. This interim approval, which may not be renewed, extends for a period of up to 2 years. During the interim approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to Part 70, and the state will permit sources based on the transition schedule submitted with the source category-limited interim approval. As discussed above, this interim approval will convert to a full approval without further action by EPA, provided Rhode Island issues permits consistent with their transition schedule.

The scope of the State of Rhode Island's part 70 program that EPA is approving in this notice would apply to all part 70 sources (as defined in the approved program) within the State of Rhode Island, 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 CAA; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

Requirements for approval, specified in 40 CFR 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 State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance

schedule, which are also requirements under Part 70. Therefore, the EPA is also granting approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the Part 70 program.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this final rule. Copies of the State's submittal and other information relied upon for the interim approval are contained in a docket 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 interim approval. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by June 5, 1996.

B. Executive Order 12866

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

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does 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 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.

Table I to the Preamble—Delegation of Parts 61 and 63 Standards As They Apply to Rhode Island's Title V Operating Permits Program

Part 61 Subpart Categories

C BERYLLIUM
D BERYLLIUM-ROCKET MOTOR
E MERCURY
F VINYL CHLORIDE
J EQUIP LEAKS OF BENZENE
L BENZENE-COLE BY-PRODUCT RECOVERY PLANT
N ARSENIC-GLASS MANUFACTURING
O ARSENIC-PRIMARY COPPER-SMELTERS
P ARSENIC-TRIOXIDE AND METALLIC
V EQUIP LEAKS (FUGITIVE EMISSION SOURCES)
Y BENZENE STORAGE VESSELS
BB BENZENE TRANSFER OPERATIONS
FF BENZENE WASTE OPERATION

40 CFR Part 63

A GENERAL PROVISIONS
H ORGANIC HAZARDOUS AIR POLLUTANTS FOR EQUIPMENT LEAKS
I ORGANIC HAZARDOUS AIR POLLUTANTS FOR CERTAIN PROCESS SUBJECT TO THE NEGOTIATED REGULATION FOR HAZARDOUS LEAKS
N CHROMIUM EMISSIONS FROM HARD AND DECORATIVE CHROMIUM ELECTROPLATING
O ETHYLENE OXIDE EMISSION STANDARDS FOR STERILIZATION FACILITIES
R GASOLINE DISTRIBUTION (STAGE 1)
GG AEROSPACE MANUFACTURING AND REWORK
II SHIPBUILDING AND SHIP REPAIR (SURFACE COATING)

Table II to the Preamble

Part 60 Subpart Categories

D FOSSIL-FUEL FIRED STEAM GENERATORS
Da ELECTRIC UTILITY STEAM GENERATORS
Db INDUSTRIAL-COMMERCIAL-INSTITUTIONAL STEAM GENERATING UNITS
Dc SMALL INDUSTRIAL COMMERCIAL INSTITUTIONAL STEAM GENERATING UNITS
E INCINERATORS
Ea MUNICIPAL WASTE COMBUSTORS
F PORTLAND CEMENT PLANTS
G NITRIC ACID PLANTS
H SULFURIC ACID PLANTS
I ASPHALT CONCRETE PLANTS
J PETROLEUM REFINERIES
K PETROLEUM LIQUID STORAGE VESSELS
Ka PETROLEUM LIQUID STORAGE VESSELS
L SECONDARY LEAD SMELTERS
M SECONDARY BRASS AND BRONZE PRODUCTION PLANTS
N BASIC OXYGEN PROCESS FURNACES PRIMARY EMISSIONS
Na BASIC OXYGEN PROCESS STEELMAKING-SECONDARY EMISSIONS
O SEWAGE TREATMENT PLANTS
P PRIMARY COPPER SMELTERS
Q PRIMARY ZINC SMELTERS
R PRIMARY LEAD SMELTERS
S PRIMARY ALUMINUM REDUCTION
T PHOSPHATE FERTILIZER WET PROCESS
U PHOSPHATE FERTILIZER-SUPERPHOSPHORIC ACID
V PHOSPHATE FERTILIZER-DIAMMONIUM PHOSPHATE
X PHOSPHATE FERTILIZER-GRANULAR TRIPLE SUPERPHOSPHATE STORAGE
Y COAL PREPARATION PLANTS
Z FERROALLOY PRODUCTION FACILITIES
AA STEEL PLANTS-ELECTRIC ARC FURNACES
CC GLASS MANUFACTURING PLANTS
DD GRAIN ELEVATORS
EE SURFACE COATING OF METAL FURNITURE
GG STATIONARY GAS TURBINES
HH LIME MANUFACTURING PLANTS
KK LEAD-ACID BATTERY MANUFACTURING
LL METALLIC MINERAL PROCESSING PLANTS
MM AUTOMOBILE AND LIGHT DUTY TRUCK SURFACE COATING OPERATIONS
NN PHOSPHATE ROCK PLANTS
PP AMMONIUM SULFATE MANUFACTURING
QQ GRAPHIC ARTS-ROTOGRAVURE PRINTING
RR TAPE AND LABEL SURFACE COATINGS

SS SURFACE COATING: LARGE APPLIANCES
TT METAL COIL SURFACE COATING
UU ASPHALT PROCESSING ROOFING
VV EQUIPMENT LEAKS OF VOC IN SOCMI
WW BEVERAGE CAN SURFACE COATING
XX BULK GASOLINE TERMINALS
BBB RUBBER TIRE MANUFACTURING
DDD VOC EMISSIONS FROM POLYMER MANUFACTURING INDUSTRY
FFF FLEXIBLE VINYL AND URETHAN COATING AND PRINTING
GGG EQUIPMENT LEAKS OF VOC IN PETROLEUM REFINERIES
HHH SYNTHETIC FIBER PRODUCTION
III VOC FROM SOCMI AIR OXIDATION UNIT
JJJ PETROLEUM DRY CLEANERS
NNN VOC FROM SOCMI DISTILLATION
OOO NONMETALLIC MINERAL PLANTS
PPP WOOL FIBERGLASS INSULATION
QQQ VOC FROM PETROLEUM REFINERY WASTEWATER SYSTEMS
SSS MAGNETIC TAPE COATING
TTT SURFACE COATING OF PLASTIC PARTS FOR BUSINESS MACHINES
UUU CALCINERS & DRYERS IN THE MINERAL INDUSTRY
VVV POLYMERIC COATING OF SUPPORTING SUBSTRATES

List of Subjects in 40 CFR Part 70

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

Dated: April 19, 1996.

John P. DeVillars,

Regional Administrator, Region I.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

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 the entry for Rhode Island in alphabetical order to read as follows:

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

* * * * *

Rhode Island

(a) Department of Environmental Management: submitted on June 20, 1995; interim approval effective on July 5, 1996; interim approval expires July 6, 1998.

(b) (Reserved)

* * * * *

[FR Doc. 96–11081 Filed 5–03–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 3

[MD Docket No. 93–297; FCC 96–110]

Administration of U.S. Certified Accounting Authorities in Maritime Mobile and Maritime Mobile-Satellite Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order establishes final rules related to the administration of U.S. certified accounting authorities in the maritime mobile and maritime mobile-satellite radio services except for distress and safety communications. The rules are required in order to ensure adherence to international settlement procedures. This Report and Order contains modified information collections requirements subject to the Paperwork Reductions Act of 1995.

EFFECTIVE DATE: This regulation is effective July 5, 1996 subject to the review of information collection requirements by the Office of Management and Budget. Upon approval of the information collections requirement from the Office of Management and Budget (OMB). The Commission will publish a public notice to notify the public of the effective date.

ADDRESSES: Comments on the information collections contained in this Report and Order should be directed to Office of The Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, DC 20503 or via the Internet to fain__ t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Shirley F. Wood, Office of the Managing Director, Financial Analysis Branch, Telephone: (202) 418–1990 or via the Internet at swood@fcc.gov.

SUPPLEMENTARY INFORMATION:

Synopsis of Commission's Report and Order Adopted March 13, 1996 and Released April 23, 1996

1. The Federal Communications Commission's International Telecommunications Settlements Section, located in Gettysburg, Pennsylvania, acts as a national clearinghouse for the settlement of international maritime mobile service and maritime mobile-satellite service accounts. In this capacity, the FCC is known as an accounting authority and settles accounts for messages transmitted or received by U.S. licensed vessels via foreign coast station facilities.

2. The FCC has also allowed private entities to settle accounts with foreign administrations. By approving these additional ''accounting authorities'', the FCC has, in effect, delegated a portion of its traditional responsibilities regarding settlement of maritime accounts to private enterprise, at least in those instances where the accounting authority is settling accounts of U.S. licensed ship stations.

3. The FCC is issuing final rules regarding the approval and/or operations of accounting authorities. This Report and Order delineates rules for (a) determining the eligibility for granting/revoking certification as a U.S. accounting authority, (b) settlement operational procedures, (c) reporting requirements, and (d) enforcement procedures.

4. *Further,* the Report and Order establishes rules to ensure compliance by ship station licensees to make proper and timely payments and declares the ship station licensee to be ultimately responsible for settlement of their accounts.

5. The complete text of this rulemaking may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, DC 20037.

Paperwork Reduction Act

The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collections contained in this Report and

Order, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. OMB notification of action is due July 5, 1996; public and agency comments are due at the same time. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0584.

Title: Administration of U.S. certified accounting authorities in maritime mobile and maritime mobile-satellite radio services.

Form No.: FCC Form 44 and FCC Form 45.

Type of Review: Revision to an existing collection to consolidate three information collection requirements.

Respondents: Individuals and households; businesses and other for-profit.

Number of Respondents: 25.

Estimated Time Per Response: Three hours per response for Application for Certification of Accounting Authority form; one hour per response for the Annual Statistical Report of Settlement Operations form; and one hour per response for the Report of Additions/Modifications/Deletions to Inventory.

Needs and Uses: The Commission will use the information in this information collection to determine eligibility of applicant; to create internal studies and to ensure compliance. The Commission will also use the information to identify the accounting authorities of U.S. licensed vessels and to update the reporting of changes in accounting authority functions to the International Telecommunication Union for inclusion in their List of Ship Stations Report. The Report and Order is modified to reduce a monthly reporting of changes to the inventory of ships for which the accounting authority performs settlements to a semi-annual requirement. A requirement for this information was included in the Notice of Proposed Rulemaking, 58 FR 246, December 27, 1993, however, the burden of the requirement was not adequately addressed at that time.

Adopted: March 13, 1996.

Released: April 23, 1996.

By the Commission.

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I. Introduction

1. By this *Report and Order,* the Commission adopts rules governing the administration of accounting authorities in the maritime mobile and the maritime mobile-satellite radio services, except for distress and safety communications. The *Report and Order* establishes a certification process and settlement procedures within a regulatory framework that is flexible enough to invite participation by many diverse entities. The rules clarify accounting authority responsibilities and strengthen the settlement process while promoting the improvement of standards and settlement operations in industry.

2. The rules we adopt below establish an application and approval process for becoming an accounting authority to ensure that only qualified applicants perform this function. The application process and procedural rules also apply to entities currently settling accounts under interim Commission certification. The interim certification will be cancelled 60 days after the effective date of these rules if these entities do not follow the application process. The *Report and Order* also establishes standardized operational procedures and reporting requirements that will assist the FCC in monitoring the overall settlement function. The rules establish the accounting authority's receipt date of accounts for purposes of determining the appropriate conversion rate for the Special Drawing Rights (SDRs) and sets forth enforcement procedures for both accounting authorities who are not operating in accordance with FCC and established international procedures *and* for ship station licensees where the licensee fails to remit proper and timely payment for public correspondence communications to the Commission or to another accounting authority. Finally, the rules declare that the ship station licensee is *ultimately liable* for proper and timely payment of accounts.

II. Background

3. International telecommunications settlements involve the collection and payment by various accounting entities of charges due foreign administrations for messages transmitted at sea by or between maritime mobile stations located on board ships subject to U.S. registry and utilizing foreign coast and coast earth station facilities. The United States Government has performed accounting settlements for maritime mobile service message charges since 1913 and, more recently, for maritime mobile-satellite service messages.

4. On June 10, 1934, the Federal Radio Commission was absorbed by the Federal Communications Commission (FCC), which had been created by the Communications Act of 1934. At that time the international radio accounts were transferred to the jurisdiction of the FCC, where they are now maintained.

5. The subjects of international telecommunications accounting and settlements are addressed in the International Telecommunication Convention (Nairobi, 1982), in the International Telecommunication Regulations (Melbourne, 1988) (ITR), in the ITU Radio Regulations and in the ITU–T (formerly CCITT) Recommendations.[1] The ITU–T develops technical, operational and service recommendations applicable to essentially all international telecommunications services via wire and radio. Provisions of Conventions and Regulations have treaty status and are therefore binding on the parties thereto. The ITU–T Recommendations do not have treaty status and are not legally binding. However, as a practical matter, the ITU–T Recommendations are

[1] ''CCITT'' is the French acronym for the International Telegraph and Telephone Consultative Committee within the International Telecommunication Union (ITU). ''CCITT'' was, nevertheless, the recognized acronym used in most languages—including English. At the ITU Additional Plenipotentiary Conference (APP) in Geneva (December 1992), the structure, working methods, and construct of the basic ITU treaty instrument was modified. The result is that the names of the sub-entities of the ITU have changed (e.g., the CCITT has become the Telecommunication Standardization Sector—ITU–T and the primary treaty instruments have become the ITU Constitution and the ITU Convention with consequential renumbering of all provisions). We note the changes coming from the APP were placed into provisional effect on March 1, 1993, with the formal entry into force of these changes being July 1, 1994 (as between those ITU Member countries who have ratified or acceded to the new instruments). We will, subsequently, refer to the new nomenclatures within this proceeding wherever practicable.

effectively the standards that govern international telecommunications.

6. The World Administrative Radio Conference (Geneva, 1979) changed the procedures governing accounting practices in the maritime mobile and maritime mobile-satellite services, partly in response to the perceived need to improve the efficiency of the international telecommunication settlements system. The Final Acts of the Conference, ratified by the U.S. Senate on October 27, 1983, revised Chapter IX of the international Radio Regulations by establishing a new Article 66 which set forth the following general principles to govern the international accounting for public correspondence in the maritime mobile and maritime mobile-satellite services:

5086 § 2. Charges for radiocommunications from ship to shore shall in principle, and subject to national law and practice, be collected from the maritime mobile station licensee:

5087 (a) by the administration that has issued the license; or

5088 (b) by a recognized private operating agency; or

5089 (c) by any other entity or entities designated for this purpose by the administration referred to in No. 5087.

7. The Mobile World Administrative Radio Conference in 1987 passed a resolution (contained in the Regulations as Resolution No. 334) providing that the provisions of Article 66 should merely refer to the International Telecommunication Regulations (ITR), assuming that the World Administrative Telegraph and Telephone Conference (WATTC–88) placed the substance of the Article 66 provisions into the ITR. The WATTC–88 did incorporate these provisions into the ITR, effective July 1, 1990 (ITR, Appendix 2). We assume a future competent Radiocommunication Conference will eventually implement the provisions of Resolution No. 334.[2] In any event, both the current Radio Regulations and the ITR provide that the ITU–T Recommendations are to be taken into account when applying the international regulatory provisions. As it now stands, the implementing recommendations developed by the ITU–T include: (1) Rec. D.90 on charging, accounting and refunds; (2) Rec. D.195 on settlement of international telecommunication balances of accounts; (3) Rec. E.200 on operational provisions for maritime mobile services; (4) Rec. F.100 on mobile operational provisions; and (5) the newest recommendation adopted, Rec. F.111 on principles of service for mobile systems.

8. The organization within the FCC responsible for the settlement of maritime mobile and maritime mobile-satellite accounts with foreign administrations is the International Telecommunications Settlements (ITS) Section of the Financial Operations Division, Office of the Managing Director. The settlement operation basically consists of examining and processing invoices received from foreign administrations to ensure the validity of the charges and, in turn, billing U.S. ship station licensees for the charges due the foreign country. The accounts generally contain the ship call sign and name, the date the message was transmitted, the number of words or minutes, the cost per word or minute in gold francs or Special Drawing Rights (SDRs) and the amount due shown in either gold francs or SDRs. Collections are then processed and appropriate payments made to the foreign countries or their agents through the U.S. Treasury.

The settlement clearinghouse service was performed by the FCC at no cost to licensees until December 19, 1989 when Public Law 101–239 established a $2.00 per line item administrative fee applicable to all ITS billings.

9. The FCC, in accordance with international procedures described within this document, has also permitted private entities, called ''accounting authorities'', to settle accounts between U.S. registered ships and foreign administrations just as ITS does. (See *In The Matter of Accounting and Operating Procedures in the Maritime Mobile Service, FCC 80–741, Mimeo No. 28600 (released December 12, 1980).*) The accounting authority may settle accounts of foreign licensed vessels in addition to settling U.S. accounts. Vessel operators/licensees choosing to have these private entities settle their accounts are generally also charged a fee under a contractual arrangement. In certain cases, the vessels are owned and/or operated by the same company that is acting as an accounting authority.

10. Accounting authorities have been established or certified by the FCC in accordance with the procedures delineated in the ITU–T Recommendations. Those procedures allow administrations to establish up to 25 accounting authorities per country. Specifically, accounting authorities are designated by the assignment of an individual Accounting Authority Identification Code (AAIC). This code is used by ships and foreign coast stations to identify where charges for messages transmitted through foreign facilities are to be sent for collection. All accounting authorities approved by the FCC to settle maritime accounts for U.S. licensed vessels are assigned a discrete four-character alpha-numeric code. Accounting authorities operating in the U.S. are assigned codes with a ''US'' prefix. Currently, only eight codes beginning with the prefix ''US'' are authorized, including US01 which is used by the Commission's ITS Section in its settlement activities.[3] Foreign-based accounting authorities may also be certified to settle accounts of U.S. licensed vessels. If approved, they use the AAIC originally assigned to them by their country of origin. The Commission has currently certified seven foreign-based accounting authorities[4] to settle accounts for U.S. flag vessels. Although all certifications have technically been interim certifications, fifteen years have elapsed since the original interim assignments.

11. There are currently *no* rules, formal guidance or procedures issued by the Commission for determining who should be certified as an accounting authority. There are *no FCC standards* of conduct for accounting authorities nor any requirement to keep the Commission informed of their activities. There are *no rules to ensure* that the overall United States settlement activity is conducted uniformly. We believe that at least minimal regulations should be in place to assist current and future accounting authorities in adhering to those international procedures as a matter of public interest and in fulfillment of U.S. treaty interests.

12. On November 9, 1993, the Commission adopted a *Notice of Proposed Rulemaking (NPRM)* that invited comment on our proposed rules governing the administration of

[2] The ITU Voluntary Group of Experts (VGE), charged with simplifying the Radio Regulations has, indeed, made such a recommendation. Once adopted by a competent World Radiocommunication Conference, the VGE recommendation would result in Article 66 simply stating that: ''The provisions of the ITR, taking into account ITU–T Recommendations, shall apply [to charging and accounting for Maritime Radiocommunications].''

[3] Besides the FCC, the accounting authorities assigned a ''US'' code are: Mackay Communications, Inc.; Radio-Holland Communications, Inc.; SAIT Communications, Inc.; Mobile Marine Radio, Inc.; Exxon Communications Company; Raytheon Service Company and Global Communications, Inc.

[4] The following foreign companies have been approved as accounting authorities: Kelvin Hughes, Ltd. (England); Peninsular Electronics, Ltd. (England); STC International Marine, Ltd. (England); Marconi International Marine Co., Ltd. (England); E.B. Communications, Ltd. (England); International Radio Traffic Services (Ireland) and ANDgate, Ltd. (Gibraltar).

accounting authorities (2FCC Record, Volume 8, No. 26, December 13–23, 1993). The NPRM proposed rules providing for: (1) a certification process, (2) settlement procedures, (3) compliance procedures, and (4) determining responsibility for proper and timely settlement of accounts.

III. Issues Analysis

13. The *NPRM* proposed rules and raised many issues regarding the administration of accounting authorities. Comments and Reply Comments were received from eleven (11) entities and are discussed in the paragraphs below where we review each of the categories and consider the comments. The commenters are listed in Appendix 2 of the *Report and Order.*

A. Eligibility

14. The *NPRM* proposed no U.S. citizenship requirements, but did propose certain restrictions regarding the physical location of settlement facilities for those accounting authorities wishing to be assigned an AAIC with a ''US'' prefix. The *NPRM* proposed that prior experience in accounting or settlement activities will be considered but is not a prerequisite to becoming an accounting authority; and, that applicants must (1) be willing and able to accept clients at a reasonable charge; (2) agree to accept accounts in both gold francs and Special Drawing Rights (SDRs) and to use the conversion rate as directed by the International Monetary Fund; and (3) agree to conduct operations in accordance with applicable FCC policies and rules, the International Telecommunication Regulations and other international rules, regulations, agreements, and, where appropriate, ITU–T Recommendations. Finally, the *NPRM* proposed that all entities intending to settle accounts of U.S. licensed vessels obtain prior Commission authorization to do so.

15. *Comments.* Mackay Communications (Mackay) urged that we prohibit the Commission from ''operating as a Recognized Private Operating Agency'' so that it can be neutral and enforce compliance of regulations without creating potential conflicts of interest. In reply comments, COMSAT Corporation (COMSAT) stated that the Commission can still be an impartial administrator and questioned Mackay's suggestion that the Commission remove itself from the accounting authority function.

Response. The Commission cannot operate as a Recognized Private Operating Agency because (1) we are a Federal government agency and (2) we do not operate telecommunications installations nor do we provide telecommunications services. However, we believe that Mackay meant ''accounting authority'' and address this response in that context. The Commission has a dual role in the administration of settlement of accounts for international telecommunications. First, as the administration responsible for settlement of accounts of U.S.-flag vessels, we are establishing rules for non-U.S. governmental accounting authorities. Second, the Commission provides a valuable function in that ship station licensees who do not select an accounting authority, simply ''default'' to US01, the AAIC of the Commission's International Telecommunications Settlements Section (ITS) which performs the FCC's accounting authority function. We believe that the functions are separate and can be administered without any conflict of interest.

16. *Comments.* Mackay urged the Commission to consider a requirement that the applicant must offer services to all U.S.-flagged vessels—not just vessels owned directly or indirectly by the applicant. EXXON Communications Company (EXXON) stated their objection to any proposal that accounting authorities ''be required to serve as common carriers offering service indiscriminately to the public.'' They pointed out that they serve as an accounting authority for their vessels only, they are not a revenue generating endeavor and, ''were the Commission to require EXXON to hold itself out to the general public indiscriminately, it would no longer be in a position to serve as an accounting authority.'' In reply comments, the American Institute of Merchant Shipping (AIMS) agreed with EXXON's proposal that accounting authorities should not be required to act as a common carrier and COMSAT opposed a ban on accounting authorities who process settlements exclusively for their own vessels. COMSAT further stated that ''the Commission may consider imposing conditions on the certifications awarded to these entities, e.g., the Commission may wish to reserve the right to require such accounting authorities to serve all customers or relinquish their AAIC when there are no * * *. codes available and there is a demonstrable need for broader-based services.''

Response. We believe the function of accounting authorities should be such that the public's best interests are served by the organizations. Such is not the case when an accounting authority settles accounts for themselves only. Thus, the rules we have adopted require that accounting authorities settle accounts for any qualified ship station licensees who request it. Accounting authorities may require credit checks, and clients must accept the terms of settlement charges, deposits, etc. However, it is not the Commission's intent in establishing these rules to place additional requirements on the interim accounting authorities nor to establish a requirement in the application process that could not be overcome. We acknowledge COMSAT's workable suggestions and we are waiving this requirement for accounting authorities who are ''grandfathered'' with the provision that, should all 25 AAICs be assigned and the need for additional codes become necessary, these same organizations will be required to extend their services to the public or to relinquish their certification. Should these grandfathered accounting authorities cease their settlement activities, the new accounting authorities assigned the AAICs will be required to serve the general public. 47 CFR, Part 3, section 3.10 is amended to add this waiver information.

17. Comments. Mobile Marine Radio, Inc. (MMR) requested that the Commission impose requirements that accounting authorities verify the creditability of its clients and ''another means of guarantee for the provider could be a requirement that the accounting authority * * * share in a loss should it occur.'' COMSAT supported the recommendation that accounting authorities be required to verify the credit worthiness of their customers and that accounting authorities should be able to reject customers they determine are credit risks and further suggest a rule to require a deposit from customers before contracting to settle accounts.

Response. The rules we are adopting below declare that the ship station licensee is ultimately responsible for the proper and timely payment of their accounts (47 CFR Part 3, section 3.76). However, this in no way relieves the accounting authority from performing their settlement activities timely and accurately. We have purposely left out regulations which would prevent accounting authorities from verifying the credit standings of potential clients or requiring deposits. The contractual agreement between accounting authorities and clients should be entered into mutually without further regulation. Ship station licensees who do not enter into such an arrangement will default to US01, the International Telecommunications Settlement Section at Gettysburg, Pennsylvania.

18. Comments. Mackay raised the issue of foreign accounting authorities settling traffic for U.S.-flagged vessels. Mackay does not object, provided U.S.-flagged vessels of foreign accounting authorities are required to pay the same ''federal excise taxes'' that vessels represented by U.S. accounting authorities are required to pay.

Response. This subject is beyond the scope of this proceeding and is not addressed in the *Report and Order.*

19. Comments. Mackay urged considering that owners of coast stations or coast earth stations not be allowed as accounting authorities. In reply comments, EXXON stated that Mackay has no rationale for their suggestion and COMSAT opposes any limitation on land earth station operators stating the ''operators * * * are more at risk to justify their involvement * * * than many other entities * * *''

Response. Our experience has been that we have encountered no problems in the past with accounting authorities who are also owners and/or operators of coast stations that lead us to believe there is a potential problem. Thus, the final rule will not ban coast stations, coast earth stations or any other entity from becoming accounting authorities as long as they meet the eligibility requirements.

20. Comments. Radio Holland USA B.V. (Radio Holland) recommended that prior relevant experience be a mandatory requirement. In reply comments, COMSAT stated that prior experience as an accounting authority should not be the sole determining factor for qualification.

Response. The Commission, in this final rule, has purposely declined to adopt regulations requiring specific prior relevant experience. We believe the rule at Part 3, section 3.10(c) is clear that related prior experience will be reviewed favorably, however, this experience or lack of experience will not be the sole determinant in granting certification. COMSAT appears to be referring to the ''grandfathering'' process directed toward the interim accounting authorities. In that case, experience will not be the sole determining factor, either, but will be evaluated along with other requirements.

21. Comments. Mackay urges the Commission to consider prohibiting ''foreign-based RPOAs'' from settling for U.S.-flagged vessels unless their administration has a reciprocal agreement allowing U.S. accounting authorities to operate in their administration. In reply comments, COMSAT agreed with Mackay that the Commission should consider whether foreign administrations permit U.S. entities to apply for accounting authority identification codes in their country.

Response. Based on our past experience where no problems of this nature have occurred, we do not think it is necessary to adopt a policy of reciprocity. At most, only ten of the AAICs will be available to foreign-based organizations. We have not addressed this issue in the rules adopted below, however, should the situation change, the Commission could revisit the issue.

22. Comments. MMR commented that, in the case of assignment of a U.S. accounting authority identification code, all settlements should be processed and made from the physical location of the accounting authority from its U.S. address. COMSAT stated there is no ''rule section providing the standard of evidence for establishing that an accounting authority will conduct operations in the United States'' and recommended the submission of partnership or corporate documents demonstrating where the entity intends to do business. COMSAT further suggested imposing a jurisdictional requirement on foreign-based accounting authorities settling for U.S. vessels requiring the accounting authorities to be subject to the jurisdiction of the U.S. courts.

Response. We will assign a ''US'' AAIC to those accounting authorities who demonstrate they are operating from a physical U.S. location. As the administration responsible, the FCC will be in a better position to monitor operations and perform audits, as applicable. Title 47 CFR, Part 3, section 3.11(a) is revised to state this explicitly. Further, we believe the reporting requirements will assist the Commission in assuring the accounting authority is continuing to settle from a U.S. location. We do not think it is necessary to subject foreign-based accounting authorities to the jurisdiction of the U.S. courts. We have concluded that such a requirement would be complex, unwieldy, and time consuming, far beyond the regulatory structure we are establishing. At this time, it appears that disputes can be satisfactorily resolved without judicial intervention.

B. Application Procedures

23. The *NPRM* proposed rules requiring the filing of an original FCC application form in order to be considered as an accounting authority. The *NPRM* requested only basic information identifying the applicant and describing the applicant's objectives and capabilities with respect to the accounting authority function. The *NPRM* stated our intention to request that any relevant experience of an applicant be detailed, that the applicant's proposed settlement plans be provided and documents demonstrating financial responsibility should provide an adequate basis for determining whether to issue a certification. We intend to process applications on a first-come, first-served basis, however, we proposed to ''grandfather'' current accounting authorities as long as they are otherwise qualified and follow the procedures established by the final rule (*Report and Order*) to obtain permanent accounting authority authorizations. Existing accounting authorities are not exempt from the new application procedures and would be required to apply for permanent accounting authority certifications within 60 days of the effective date of these rules or risk losing their status as accounting authorities. The *NPRM* established an FCC policy that a minimum of 15 of the available 25 Accounting Authority Identification Codes (AAICs) be reserved for use by accounting authorities conducting settlement operations in the United States. Accounting authorities conducting settlement operations within the United States will be assigned a ''US'' AAIC prefix if approved. Certified accounting authorities, who maintain their settlement operations outside the U.S., would retain the AAIC originally assigned by the country of origin.

24. The *NPRM* included language in the application and rules which would make clear to applicants the requirement to adhere to applicable FCC policies and rules, the International Telecommunication Regulations (ITR), and other international rules, regulations, agreements, and, where appropriate, ITU–T Recommendations. We invited comment as to the types of documents acceptable for proving financial responsibility as well as the specific criteria for evaluation. The *NPRM* proposed that, although the United States is not a guarantor of payments by its citizens, our proposed rules sought to minimize potential financial risks that might be present if settlement operations are performed by other accounting authorities. Further, the *NPRM* documented the FCC policy that the ship station licensee has final responsibility for settlement should their selected accounting authority be unable or unwilling to make valid payments to foreign entities.

25. The *NPRM* also detailed the procedures the Commission will utilize to obtain public comment on applications received by the Commission. Comments received during

the informal public comment period will be taken into consideration in making a determination as to whether to approve the applicant as an accounting authority. The *NPRM* further states that, if the applicant is found to be qualified, the Commission will inform the applicant, in writing, that the application has been approved.

26. Comments. Mackay stated that they encourage the proposed ''grandfathering'' of interim accounting authorities. EXXON commented that the proposed formal application process is unnecessary for the grandfathering process. COMSAT stated they do not understand how the grandfathered applications will participate in the licensing process, that the grandfathered applications will limit the number of new entrants to ten and the public interests will not be served by limiting the number of new applicants. IDB Mobile Communications, Inc. (IDB) agreed with COMSAT that ''all applicants should be considered equally in the applicant process and should be subject to the same criteria for approval.'' In reply comments, EXXON stated that all applicants do have an equal opportunity to apply and ''there is no shortage of available accounting authority identification codes.'' EXXON further commented it is only fair to allow grandfathered accounting authorities to retain their status and ''action to the contrary would prove extremely disruptive to existing accounting procedures.'' In reply comments, AIMS stated their agreement with EXXON's position, but COMSAT disagreed with commenters who would restrict the certification process by exempting interim accounting authorities from the application filing requirements.

Response. The Commission does not intend to hinder the current operations of interim accounting authorities and the final rule has provided for the ''grandfathering'' of such applicants, provided they meet the eligibility requirements. Applicants will be subject to the same criteria and considered equally. It should be noted that, although only ten accounting authority identification codes will be available provided all interim accounting authorities are approved, this is not a new limitation. Additionally, the interim rules for granting certification did not provide the Commission with the same information requested in this rule, and, since there have been no reporting requirements, the Commission has little information about the settlement activities of the interim accounting authorities. Information provided in response to the *Report and Order* should assist the Commission in its role as administrator of accounting authorities.

27. Comments. Mackay urged the Commission to give ''existing U.S.-based RPOAs'' preference in order of consideration regardless of when the application was received in relation to other applications. In reply comments, COMSAT opposed any ban on foreign-based settlement entities, but proposed that the Commission reserve the right to process U.S.-based accounting authority applications before foreign-based applicants, should the Commission receive more applications than the available number of accounting authority identification codes.

Response. The rules we are adopting will not place a ban on foreign-based settlement entities, however, it should be noted that, although the rule states (47 CFR, Part 3, section 3.21(b)) that a minimum of 15 identification codes will be retained for ''US'' codes, that does not mean we will withhold certification of U.S. entities and await applications from foreign-based entities until a quota of ten is certified. In cases where U.S. applicants apply and no foreign-based applications are on-hand, the U.S. applications could be approved.

28. Comments. Mackay commented they want to ensure there is sufficient notification to enable existing accounting authorities to complete the application process. COMSAT stated there is no mention of the triggering date for filing.

Response. This final rule establishes the effective date of the rules, which is 30 days following the publication of the *Report and Order* in the Federal Register. Interim accounting authorities will be required to apply for permanent accounting authority certifications within 60 days of the effective date. Others seeking certification may submit their applications at any time following the release date. They cannot usurp those requesting ''grandfathering'' but they will be considered on a first-come, first-served basis for the remaining codes.

29. Comments. Radio Holland recommended the retention of their existing accounting authority identification code for interim accounting authorities approved for a permanent ''license.'' Further, Radio Holland seeks clarification of the term ''entity''.

Response. The Commission believes the implementation of these rules should make little disruption to the manner in which interim accounting authorities are currently conducting business. Title 47 CFR, Part 3, section 3.22 is amended to state that those interim accounting authorities approved for permanent certification will retain their existing accounting authority identification code.

In addressing the request to define ''entity'', the following definition is provided: An entity is an individual or a business that is self-contained, separate and independent of other organizations. An entity may exist within or be a part of an overall, widely diversified organization.

30. Comments. Radio Holland pointed out their perceived consequences if an application for an accounting authority with interim certification was not approved. They pointed out that communications from/to vessels would cease and a change in code might involve huge costs. Radio Holland stated that certain countries mention the accounting authority identification code on their registrations and that, changes can cost up to $500 per vessel. Radio Holland proposed, in case of non-approval, the Commission extend the period to include time for resolution of problems including a 6-month period to satisfy requirements. SAIT Communications (SAIT) recommended a procedure for resolution of problems before a final decision. In reply comments, EXXON agreed with SAIT that the rules should provide procedures for appeal. IDB disagreed, in reply comments, with Radio Holland's proposal of additional time to meet the requirements and proposed ''the Commission only consider * * * applicants which meet the requirements at the time of application and that the Commission subject every applicant to the same level of scrutiny.'' In reply comments, COMSAT Corporation agreed with commenters requesting a clarification of the process for evaluating applications and the appeal rights of applicants denied certification. Further, COMSAT proposed a ''thirty-day petition to deny process for reviewing * * *.''

Response. The Commission recognizes the consequences of not approving a permanent certification to an interim accounting authority. However, we anticipate that interim accounting authorities will have no problem completing the application process. Inasmuch as possible, we propose to work through these situations during the comment period to prevent unusual delays. 47 CFR, Part 3, section 3.29 is amended in the *Report and Order* to provide procedures for seeking review when the application for certification is denied. We do emphasize, however, that all comments resulting from the public notice will be

considered in granting/denying certifications.

31. Comments. Mackay raised the issue of continued use of an accounting authority identification code if a business is acquired, merged or sold. Radio Holland proposed that codes not be canceled automatically in case of transfer or change of control of an accounting authority. Radio Holland is concerned that the new application of the new controlling entity might not be considered due to the ''first come-first served'' clause and the limitation of total codes. In reply comments, COMSAT supported commenters who propose a modification of the rule to permit the transfer of accounting authority identification codes pursuant to the sale or transfer of control. EXXON recommended that the Commission develop procedures for the pro-forma transfer of control of accounting authorities.

Response. The final rules adopted below will allow the continued use of accounting authority codes in these cases provided the new entity can meet the eligibility qualifications. 47 CFR Part 3, section 3.51 is amended to require the transferee to comply with the same application process including public comment and Commission scrutiny that all applicants do. The rules also require the transferee to certify to the Commission that all accounts are accepted and to provide a list of the accounts. In the case of a merger of accounting authorities, the merged entity will be allowed to decide which AAIC to keep.

32. Comments. Mackay stated the Commission should define what constitutes sound financial status and how the status will be monitored in the future. Mackay suggested requiring the applicant to be a business with established accounting procedures and formal audited statements. Radio Holland recommended that a sound financial track record be made a mandatory requirement. Marconi Marine asks if a copy of their statutory accounts would be acceptable as evidence of financial status. COMSAT recommended fairly strict financial requirements and offered several options: (1) requiring a bond, (2) requiring accounting authorities to demonstrate and maintain an asset value of a certain percentage in relation to outstanding debts, (3) requiring accounting authorities to put deposits in escrow, (4) dollar requirements for cash-on-hand amounts, (5) limits on the number of outstanding loans and the amount of risk undertaken, and/or (6) requiring accounting authorities to take deposits from customers under certain circumstances. COMSAT further recommended the rules be revised to require the initial (and annual) submission of independently ''audited financial statements'' and cite requirements in the rural cellular radio services (47 CFR 22.917(c)(6)). EXXON commented that a formal financial showing should not be required of accounting authorities with interim authority during the ''grandfathering'' process and, in reply comments, EXXON disagreed with COMSAT's proposal for stricter financial requirements for accounting authorities. Global Communications (Global) recommended accounting authorities require a deposit from vessels to be placed in an escrow account to assure some company reserve in case of default.

Response. The Commission is interested in ensuring that accounting authorities have a sound financial background with a reputation for good business practices. Any comments received following the public notice announcing the application will be carefully considered. However, we believe our objective can be met by requiring formal financial statements from applicants who are business entities and other documents, e.g., tax statements, statements proving assets and liabilities from individuals. These, coupled with any forthcoming comments, will provide adequate information for making a sound decision. Marconi Marine's statutory accounts will probably be adequate to prove financial responsibility. However, 47 CFR, section 3.24 is amended in the final rule to include a requirement to provide additional information to the Commission, as required. As to whether accounting authorities who will be grandfathered should provide financial responsibility evidence, as stated elsewhere, the interim accounting authorities, although not subject to any formal FCC rules in the past, must now prove their eligibility by complying with the application process.

33. Comments. Mackay asked what method will be used to obtain public comment and who will evaluate the comments. Mackay is concerned that significant time and money could be spent while responding to unsubstantiated comments or accusations. COMSAT requested that applicants ''be subject to petitions to deny filed within 30 days of the public notice identifying the applicant. Radio Holland recommended consideration of consultation with selected U.S. coast stations and foreign administrations involved in international telecommunication settlements in assessing the qualifications and actual performance of applicants. In reply comments, COMSAT supported Radio Holland's comment ''that the Commission consider foreign-based applicant's record in dealing with U.S. service providers.''

Response. The public notice/comment process is discussed in Part 3, section 3.29 of the final rule. The comments and application will be evaluated by Commission employees designated by the Managing Director and including the Accounting Authority Certification Officer. As to whether consultations with U.S. service providers will be necessary, these organizations will have an opportunity to comment as discussed in the same rule cite.

C. Settlement Operations

34. The *NPRM* proposed several operational requirements for accounting authorities. Basically, the operational requirements parallel applicable ITR and other international rules, regulations, agreements, and applicable ITU–T Recommendations and require adherence to established international procedures. The *NPRM* proposed that accounting authorities be allowed a full six months following certification as an accounting authority to commence settlement operations. The *NPRM* also proposed a settlement period within which individual settlements must be accomplished, consistent with ITU procedures. This provision requires accounting authorities to make timely payment to foreign administrations and to accept accounts both in gold francs and in Special Drawing Rights (SDRs). The proposed rules are in accord with existing international procedure and FCC policy, as is the requirement to settle accounts taking into consideration ITU–T Recommendation D.90.* In addition, the *NPRM* proposed rules to establish the requirement that accounting authorities cooperate fully with the Commission concerning maritime settlements issues. Since the United States government is required, upon request, to take all possible steps, within the limits of applicable national law, to ensure settlement of the accounts of the licensee, (Radio Regulations, Geneva 1979, Article 66, Section III Accounting, paragraph 10, number 5097; and, International

* We note that the latest (ITU–T Study Group 3, December 1994) accepted version of ITU–T Recommendation D.90 provides that bills be paid by the accounting authority without delay and within 3 months of receipt or within 4 months after dispatch, whichever is the shortest period. However, the Revised Rec. D.90 also recognizes that the ITR period of 6 months after dispatch is controlling.

Telecommunication Regulations, Melbourne 1988, Appendix 2—Additional Provisions Relating to Maritime Telecommunications, paragraph 4.2) this requirement is intended to ensure that the Commission is kept aware of potential problems or issues which could affect the national interest or which could have a significant impact on overall settlement operations. The proposed rules also made accounting authorities subject to audit by the Commission or its representative.

35. Comments. One commenter, Global, responded both as an accounting authority and a radiotelephone station. Global recommended providing detailed requirements for the day-to-day operation of accounting authorities. They commented that detailed rules would eliminate confusion in identifying accounts, promote the dissemination of mutual information and the timeliness of settlements and produce better records and internal accounting. Global recommended requiring accounting authorities with more than 100 vessels to maintain an ''800'' number 24 hours a day that coast stations can call for information. They further stated that accounting authorities should acknowledge receipt of invoices, should notify coast stations of rejections within 30 days and clearly identify invoices being paid. When invoices are paid by bank draft, a separate notice should be sent to coast stations detailing the paid invoices.

Response. Global's recommendations are good, sound business practices which we hope accounting authorities will consider. However, the final rules do not provide detailed requirements for day-to-day operation because the Commission believes that organizations should not be limited in methodology as long as they achieve timely and accurate settlements.

36. Comments. Marconi Marine referred to rules in the *NPRM* stating that payments should be made in U.S. dollars. They stated that most of their payments are made in Sterling.

Response. The final rules, Part 3, sections 3.46 and 3.47, provide for payment in other currencies. However, it should be noted that, although payments can be made in currency other than U.S. dollars, the rules require a written agreement between the foreign administration(s) and the accounting authority to be approved by the Commission. This agreement can be a part of the original certification process or it can be presented to the Commission at anytime.

37. Comments. COMSAT suggested the consideration of permitting maritime customers to select direct billing payment methods from their service providers. COMSAT further states that, although Article 66 provides for collection of charges for radiocommunications by RPOAs, that, ''in order for RPOAs to settle accounts with foreign administrations on behalf of their customers, the Commission requires that the service provider be certified as an accounting authority.''

Response. There is no legal bar preventing service providers from engaging in direct billing. (Radio Regulations, Geneva 1979, Article 66, Section II, Accounting Authority, para. 2, numbers 5086–5089; see also ITR, Appendix 2) Neither do we believe the adopted rules contain language that prevent a service provider from entering into contractual agreements with their clients to include direct billing. The issue of requiring RPOAs to become accounting authorities arises when the RPOA settles debtor accounts for their clients.

38. Comments. Peninsular Electronics (Peninsular) commented that most ship licensing administrations for which they are an accounting authority require them to confirm acceptance of total accounting responsibilities before they issue the Ship Radio Station license. Their services cover settlement of all communications originated by clients. They stated that the proposed rules only refer to settlement with foreign administrations. Peninsular asks if U.S. settlements are also covered by FCC regulations.

Response. These rules apply to settlements of accounts for U.S. flag vessels for messages transmitted via foreign coast and coast earth station facilities *only.* The final rules are amended, at 3.1 to explain ''[Accounting authorities] settle accounts due foreign administrations for messages transmitted at sea by or between maritime mobile stations located on board ships subject to U.S. registry and utilizing foreign coast and coast earth station facilities.''

39. Comments. MMR commented that they were instrumental in establishing the current 4-month settlement time frame, they are a strong advocate for reducing the settlement time frame and they suggest that settlements not handled within the allotted time frame should have interest penalties applied and enforced. COMSAT Corporation urged the Commission to ''consider expediting the settlement procedures down to four months, or shorter * * *'' In reply comments, IDB recommended a three-month settlement period and referred to the *NPRM* which requires a 6-month settlement period. In reply comments, COMSAT agreed with MMR that accounting authorities who do not make timely settlements should be assessed an interest penalty by the Commission.

Response. The Commission recognizes that many organizations have up-to-date technology and can effect settlements well ahead of the 6-month settlement period. This can be an advantage in soliciting clients; however, it is not our intention to place additional burdens on existing accounting authorities but to provide a structure within which they can continue to function. The final rules do not adopt a requirement that is more stringent than Radio Regulations, Article 66, and ITR, Appendix 2 which require a 6-month settlement period (See note to paragraph 34, above.). As to the issue of interest penalties, we will not impose such a rule; however, the rules in 47 CFR, Part 3 establish a number of sanctions including cancellation of their certification for those accounting authorities who repeatedly fail to settle accounts timely.

40. Comments. Mackay commented that the Commission should be more specific regarding the extent, time and scope of proposed audits. Marconi Marine commented that they do not see the necessity for audit since they are regularly audited internally and externally. COMSAT requested clarification of audit authority to describe events that could ''trigger the audit process.''

Response. Routine audits are not a part of this rulemaking, rather, an audit would normally be precipitated only in the event of a disagreement as to amounts of accounts, late payments, etc. The audits will be strictly related to accounting authority activities.

41. Comments. Peninsular pointed out that the *NPRM* states that ITU–T recommendations are not legally binding, but it is indicated they must be taken into account together with FCC rules and regulations. Peninsular further commented that it is not clear whether compliance with D.90 is an FCC requirement or if parallel FCC rules exist. Marconi Marine expressed concern about references regarding ''abiding by FCC rules'' and commented that ''this seems somewhat open ended to us, as we do not know what rules we would be agreeing to abide by.'' Marconi recommended altering the wording of the text to reflect agreement to abide by rules relating to accounting authorities only.

Response. The Commission believes that accounting authorities should follow the ITU–T recommendations which are generally considered to

govern international telecommunications, and they should always be considered in technical, operational and service decisions. Any references to FCC rules within this *Report and Order* refer to 47 CFR, Part 3, the new rules being established by this proceeding and related to the oversight and administration of accounting authorities. 47 CFR, Part 3, section 3.43(f) is amended to add the CFR reference.

42. Comments. MMR commented there are presently no guidelines whereby accounting authorities can enlist assistance from its administration ''when conflicts arise between the provider and the accounting authority.'' In reply comments, COMSAT endorses MMR's suggestion for enlisting the Commission's assistance in attempting to resolve bad debt * * *''

Response. The Commission believes that each administration has a responsibility to assist in resolving outstanding issues between accounting authorities and clients or foreign administrations. The Commission proposes to respond through all available methods to resolve issues and are prepared to follow through by enforcing applicable rules (Part 3, 3.52(b), 3.70–3.76).

43. Comments. COMSAT commented that the rules should make it clear that the accounting authority is a guarantor of payment.

Response. In the rules adopted below, the non-governmental accounting authorities, by virtue of their contractual agreement with their clients and their signed application wherein they agree to perform settlements in accordance with 47 CFR, Part 3, must perform their settlement activities properly or be subjected to a number of sanctions and/or cancellation of their certification.

However, the *Report and Order* does not state that any accounting authority is a guarantor of payment. Rather, at Part 3, section 3.76, the ship station licensee is declared responsible for final payment of its accounts. Because the ship station licensee has the most to lose for non-payment of accounts, the Commission believes care will be given to the selection of an accounting authority.

44. Comments. Marconi Marine recommends the rules define more clearly the complaint/inquiry resolution procedures and there should be a clearly defined arbitration procedure.

Response. These rules, section 3.52, are purposely presented in general terms because we believe complaints and arguments must be addressed on a case-by-case basis. By leaving these rules ''general'' in tone, the Commission will be able to respond to issues without restrictions. We think this approach will be an advantage to applicants and/or accounting authorities. Section 3.52(a) is amended in the final rule to require that a copy of complaint/inquiry resolution procedures be sent, upon request, to the Commission.

D. Reporting Requirements

45. The *NPRM* proposed several new reporting requirements for accounting authorities. These reports should enable the Commission to monitor accounting authority operations to ensure adherence to the adopted rules and to appropriate international settlement procedures. Currently, the Commission submits monthly reports to the ITU in Geneva detailing the inventory of U.S. licensed ship stations operating in international waters. The *NPRM* proposed that accounting authorities provide the Commission with a detailed report of additions, deletions, or modifications to their inventory of serviced vessels each month. The Commission would use this information to maintain the ITU database and to assure efficient settlement operations. The proposed rules also required an end of year inventory of vessels for which the accounting authority is the settlement entity and an annual statistical report which would provide information to the Commission regarding settlement operations.

Comments will be addressed separately for each of the reports, as follows:

Annual Statistical Report of Operations

46. Comments. Peninsular stated that their settlement operation does not require identifying the actual number of settlements and this information would not be readily available. They asked if the necessity for this information could be reexamined. Marconi Marine commented they would have difficulty providing both the number of line items and payments to individual administrations. MMR asked what purpose the collection of monetary statistics serves.

Response. The Commission is delegating a portion of its settlement responsibility to the certified non-governmental accounting authorities. Our oversight responsibilities require that we ensure that settlements for U.S. licensees are being performed properly and timely. The information will assist us in monitoring the volume and aging of accounts. We have reviewed statements from foreign administrations and observe the billings have sufficient detail (a line-by-line listing of individual calls to a specific ship for a specific service) to comply with this requirement. Therefore, the final rule will require accounting authorities to comply with this reporting requirement.

47. Comments. COMSAT recommended modifying the rules to require additional evidence of financial responsibility and recommended quarterly statistical reports filed within one month of the end of each quarter, showing an aging of liabilities. In reply comments, EXXON opposed the proposals to require the annual reports on a quarterly basis. EXXON further commented that if the report is required, it should apply to accounting authorities settling for unaffiliated entities and on an annual basis only. In reply comments, AIMS supported EXXON's proposal that the reporting requirement apply only to accounting authorities settling accounts for unaffiliated entities. In reply comments, COMSAT supported ''the adoption of streamlined reporting requirements which provide the Commission and the public with an accurate * * * mechanism for monitoring the aging of accounts and assessing the financial performance of accounting authorities.'' COMSAT opposed any limitation of the annual statistical report and commented that the report can be used to assess the accounting authority's settlement performance, determine whether the accounting authority is meeting its obligations to customers and service providers * * *''

Response. The Commission will retain the reporting requirement and believes the usefulness of the information outweighs our desire to minimize the burden of reporting. The *NPRM,* Part 3, 3.60(d) states that the information will provide statistical data for Commission use. Subsequently, we have determined that the data can be useful in determining whether accounting authorities are performing settlements, the volume of settlements and the timeliness of settlements. The report, FCC Form 45 states ''provide statistical information to the Commission for overall program monitoring purposes.'' Lines 2, 3, and 4 referenced by Peninsular address the average number of unprocessed settlements on hand, the number processed to completion more than 180 days after dispatch from foreign administration and the percent of settlements processed to completion more than 180 days after dispatch. This information will be helpful in determining whether settlements are being accomplished timely. Rule section 3.60 (d) is amended to include the additional uses of the report.

Inventory of Vessels

48. Comments. MMR questioned the proposed requirement to report an inventory of vessels. MMR believes this information is available through the Private Radio Bureau's Licensing Division. Global, who is both an accounting authority and a high-seas radiotelephone station, cited the difficulty in using ITU's List of Ship Stations, saying it is published once a year and is often out of date because of delays in reporting changes to ITU.

Response. As background, the Commission/ITS has a responsibility to provide a report of accounting authority information to ITU. ITS has experienced the same problems that Global has in identifying the accounting authorities of vessels. This reporting is accomplished in the following manner: The Wireless Telecommunications Bureau maintains a database of ships in the maritime service. That database is used to prepare a report of changes in accounting authority functions to ITU, however, the database can only be updated by ITS when current information becomes available. By requiring accounting authorities to provide the initial inventory of vessels and the end-of-year inventory, the List of Ship Stations Report will provide more accurate, up-to-date information. Additionally, the title of Part 3, section 3.60(a) is changed to ''Initial Inventory of Vessels.''

Report of Additions/Modifications/Deletions

49. Comments. EXXON stated that they settle only for their own vessels and their inventory remains relatively constant and a monthly report would serve no useful purpose and be unduly burdensome. In reply comments, AIMS agreed with commenters who feel it is unnecessary to require monthly inventories when there is no change. COMSAT agreed with EXXON regarding the modification of inventory reporting so that only commercial accounting authorities are required to submit monthly inventory reports. Global recommended that accounting authorities should publish lists of ships accepted quarterly or monthly.

Response. We have considered the requests for a less burdensome requirement. Part 3, section 3.60(b) is revised to require a *semi-annual report*. However, we believe there is merit in requiring a ''no-change'' report, as applicable. The report will assure a ''status-quo'' in inventory.

50. Comments. Marconi Marine stated that some information reported would be commercially sensitive and should be kept confidential.

Response. The rules adopted below do not automatically offer confidentiality because we do not believe that the information requested is commercially sensitive. The application form states that ''Information requested by this form will be available to the public.'' Nonetheless, any entity submitting information to the Commission may submit a request that such information not be made routinely available for public inspection. We will consider requests as discussed in 47 CFR, section 0.459. A new rule section, Part 3, section 3.62, addresses this issue.

E. Enforcement

51.The *NPRM* set forth the procedures the Commission will use to investigate and to resolve complaints or infractions of the Commission's rules or established international settlement procedures. The proposed rules specified grounds for enforcement sanctions, including forfeiture, and/or cancellation of an accounting authority's certification and also specified that the Commission will afford an accounting authority notice and an opportunity to present its side of any issue involving cancellation of its accounting authority privilege. The proposed rules also provide that any ship station licensee affected by the cancellation of an accounting authority's privilege must find another accounting authority to settle its accounts. The Commission will notify the ship stations, via a Public Notice, of any cancellations, and, inasmuch as possible, list individual shipowners serviced by the cancelled accounting authority as identified from the required reports of vessel inventories. Finally, the proposed rules provided for forfeiture or other sanction action, should a ship operator or licensee not remit full and timely payment to the Commission or to an approved accounting authority when properly billed or in the event that the accounting authority fails in their responsibility to forward payment to the foreign entity. The Commission reserves the right to cooperate with foreign administrations in restricting public correspondence communications to and from vessels for which valid payments have not been received or made as required (Distress and safety communications must be carried without charge.) and to utilize available debt collection procedures to collect amounts owed.

52. Comments. Mackay stated that there is no mention of a procedure to be followed or the opportunity for appeal if the Commission denies privilege, Part 3, section 3.28, [and] further, Mackay commented that a procedure and appeal process should be available under a rule section.

Response. Part 3, section 3.29 is amended in the final rule to provide time frames for problems encountered during the application process. Every effort will be made to remedy any problems during the timeframes. As to any format for appeal, we are purposely presenting this rule section in general terms only because we believe these situations would need to be addressed on a case-by-case basis. Part 3, section 3.72(b) is also amended in the final rule to include timeframes for appeal of sanctions and to include the address for filing an appeal.

53. Comments. COMSAT urged the Commission to clarify that U.S. approved accounting authorities may be sanctioned by the Commission for failing to perform settlement operations here, or abroad, involving either U.S.-registered or foreign vessels.

Response. The rules adopted below address settlement of accounts of U.S. ship station licensees and do not address the settlement of foreign vessels.

F. Conclusion

54. In this *Report and Order*, we are adopting rules that establish basic qualifications and requirements for individuals or entities who may wish to serve as accounting authorities for the settlement of international radio maritime accounts involving U.S. registered vessels operating in foreign or international waters. These rules also establish requirements to ensure that accounting authorities operate in accordance with established international procedures. There are few changes in this final rule from the related *Notice of Proposed Rulemaking.* All comments and changes are discussed in III, Issues Analysis, paragraphs 13–53.

IV. Procedural Matters

A. Ex Parte

55. This is a non-restricted *Report and Order* rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 CFR Sections 1.1202, 1.1203, and 1.1206(a).

B. Final Regulatory Analysis

56. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

(a) Purpose of this action: This *Report and Order* sets forth the final rules

concerning the administration of accounting authorities in the maritime mobile and the maritime mobile-satellite services except for distress and safety communications.

(b) Summary of the issues raised by the public comments in response to the Initial Regulatory Flexibility analysis: There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

(c) Significant alternatives considered: The *Notice of Proposed Rulemaking* (November 9, 1993) in this proceeding presented standards for the approval/cancellation of accounting authority certifications and set forth guidelines for settlement operations, reporting requirements and enforcement. The commenters supported the Commission's intent to provide an effective regulatory framework which permits markets for communications services to function effectively while eliminating unnecessary regulations. There were several requests for more stringent guidelines. Upon review, we determined the public interest would be better served by allowing accounting authorities to perform settlements in an environment that allows them to operate as closely as possible to the manner in which interim accounting authorities have performed in previous years. Because the system has worked relatively trouble-free with no established FCC rules in the past, we intend to minimize any regulations/additional burden on accounting authorities in this Order.

V. Ordering Clauses

57. Accordingly, it is ordered that the rules specified below are adopted.

58. It is further ordered that the *rules herein* will be effective immediately upon approval of the information collection requirements by the Office of Management and Budget. The Commission will publish a public notice to notify the public of the effective date.

List of Subjects in 47 CFR Part 3

Accounting, Administrative practice and procedure, maritime carriers, Penalties, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations is amended by adding a new Part 3 as follows:

PART 3—AUTHORIZATION AND ADMINISTRATION OF ACCOUNTING AUTHORITIES IN MARITIME AND MARITIME MOBILE-SATELLITE RADIO SERVICES

General

Sec.
3.1 Scope, basis, purpose.
3.2 Terms and definitions.

Eligibility

3.10 Basic qualifications.
3.11 Location of settlement operation.

Application Procedures

3.20 Application form.
3.21 Order of consideration.
3.22 Number of accounting authority identification codes per applicant.
3.23 Legal applicant.
3.24 Evidence of financial responsibility.
3.25 Number of copies.
3.26 Where application is to be mailed.
3.27 Amended application.
3.28 Denial of privilege.
3.29 Notifications.

Settlement Operations

3.40 Operational requirements.
3.41 Amount of time allowed before initial settlements.
3.42 Location of processing facility.
3.43 Applicable rules and regulations.
3.44 Time to achieve settlements.
3.45 Amount of charges.
3.46 Use of gold francs.
3.47 Use of SDRs.
3.48 Cooperation with the Commission.
3.49 Agreement to be audited.
3.50 Retention of settlement records.
3.51 Cessation of operations.
3.52 Complaint/inquiry resolution procedures.
3.53 FCC notification of refusal to provide telecommunications service to U.S. registered vessel(s).
3.54 Notification of change in address.

Reporting Requirements

3.60 Reports.
3.61 Reporting address.
3.62 Request for confidentiality.

Enforcement

3.70 Investigations.
3.71 Warnings.
3.72 Grounds for further enforcement action.
3.73 Waiting period after cancellation.
3.74 Ship stations affected by suspension, cancellation or relinquishment.
3.75 Licensee's failure to make timely payment.
3.76 Licensee's liability for payment.

Authority: 47 U.S.C. 154(i), 154(j) and 303(r).

General

§ 3.1 Scope, basis, purpose.

By these rules the Federal Communications Commission (FCC) is delineating its responsibilities in certifying and monitoring accounting authorities in the maritime mobile and maritime mobile-satellite radio services. These entities settle accounts for public correspondence due to foreign administrations for messages transmitted at sea by or between maritime mobile stations located on board ships subject to U.S. registry and utilizing foreign coast and coast earth station facilities. These rules are intended to ensure that settlements of accounts for U.S. licensed ship radio stations are conducted in accordance with the International Telecommunication Regulations (ITR), taking into account the applicable ITU–T Recommendations.

§ 3.2 Terms and definitions.

(a) *Accounting Authority.* The Administration of the country that has issued the license for a mobile station or the recognized operating agency or other entity/entities designated by the Administration in accordance with ITR, Appendix 2 and ITU–T Recommendation D.90 to whom maritime accounts in respect of mobile stations licensed by that country may be sent.

(b) *Accounting Authority Certification Officer.* The official designated by the Managing Director, Federal Communications Commission, who is responsible, based on the coordination and review of information related to applicants, for granting certification as an accounting authority in the maritime mobile and maritime mobile-satellite radio services. The Accounting Authority Certification Officer may initiate action to suspend or cancel an accounting authority certification if it is determined to be in the public's best interest.

(c) *Accounting Authority Identification Codes (AAICs).* The discrete identification code of an accounting authority responsible for the settlement of maritime accounts (Annex A to ITU–T Recommendation D.90).

(d) *Administration.* Any governmental department or service responsible for discharging the obligations undertaken in the Convention of the International Telecommunication Union and the Radio Regulations. For purposes of these rules, ''Administration'' refers to a foreign government or the U.S. Government, and more specifically, to the Federal Communications Commission.

(e) *Authorization.* Approval by the Federal Communications Commission to operate as an accounting authority. Synonymous with ''certification''.

(f) *CCITT.* The internationally recognized French acronym for the International Telegraph and Telephone Consultative Committee, one of the

former sub-entities of the International Telecommunication Union (ITU). The CCITT (ITU–T)[1] is responsible for developing international telecommunications recommendations relating to standardization of international telecommunications services and facilities, including matters related to international charging and accounting principles and the settlement of international telecommunications accounts.

Such recommendations are, effectively, the detailed implementation provisions for topics addressed in the International Telecommunication Regulations (ITR).

(g) *Certification.* Approval by the FCC to operate as an accounting authority. Synonymous with ''authorization''.

(h) *Coast Earth Station.* An earth station in the fixed-satellite service or, in some cases, in the maritime mobile-satellite service, located at a specified fixed point on land to provide a feeder link for the maritime mobile-satellite service.

(i) *Coast Station.* A land station in the maritime mobile service.

(j) *Commission.* The Federal Communications Commission. The FCC.

(k) *Gold Franc.* A monetary unit representing the value of a particular nation's currency to a gold par value. One of the monetary units used to effect accounting settlements in the maritime mobile and the maritime mobile-satellite services.

(l) *International Telecommunication Union (ITU).* One of the United Nations family organizations headquartered in Geneva, Switzerland along with several other United Nations (UN) family organizations. The ITU is the UN agency responsible for all matters related to international telecommunications. The ITU has over 180 Member Countries, including the United States, and provides an international forum for dealing with all aspects of international telecommunications, including radio, telecom services and telecom facilities.

(m) *Linking Coefficient.* The ITU mandated conversion factor used to convert gold francs to Special Drawing Rights (SDRs). Among other things, it is used to perform accounting settlements in the maritime mobile and the maritime mobile-satellite services.

(n) *Maritime Mobile Service.* A mobile service between coast stations and ship stations, or between ship stations, or between associated on-board communication stations. Survival craft stations and emergency position-indicating radiobeacon stations may also participate in this service.

(o) *Maritime Mobile-Satellite Service.* A mobile-satellite service in which mobile earth stations are located on board ships. Survival craft stations and emergency position-indicating radiobeacon stations may also participate in this radio service.

(p) *Public Correspondence.* Any telecommunication which the offices and stations must, by reason of their being at the disposal of the public, accept for transmission. This usually applies to maritime mobile and maritime mobile-satellite stations.

(q) *Recognized Operating Agencies (ROAs).*[2] Individuals, companies or corporations, other than governments or agencies, recognized by administrations, which operate telecommunications installations or provide telecommunications services intended for international use or which are capable of causing interference to international telecommunications. ROAs which settle debtor accounts for public correspondence in the maritime mobile and maritime mobile-satellite radio services must be certified as accounting authorities.

(r) *Ship Station.* A mobile station in the maritime mobile service located on board a vessel which is not permanently moored, other than a survival craft station.

(s) *Special Drawing Right (SDR).* A monetary unit of the International Monetary Fund (IMF) currently based on a market basket of exchange rates for the United States, West Germany, Great Britain, France and Japan but is subject to IMF's definition. One of the monetary units used to effect accounting settlements in the maritime mobile and maritime mobile-satellite services.

(t) *United States.* The continental U.S., Alaska, Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States.

Eligibility

§ 3.10 Basic qualifications.

(a) Applicants must meet the requirements and conditions contained in these rules in order to be certified as an accounting authority. No individual or other entity, including accounting authorities approved by other administrations, may act as a United States accounting authority and settle accounts of U.S. licensed vessels in the maritime mobile or maritime mobile-satellite services without a certification from the Federal Communications Commission. Accounting authorities with interim certification as of the effective date of this rule must submit to the application process discussed in Section 3.20. They will be ''grandfathered'', i.e, granted permanent certification provided they demonstrate their eligibility and present a proper application.

(b) U.S. citizenship is not required of individuals in order to receive certification from the Commission to be an accounting authority. Likewise, joint ventures need not be organized under the laws of the United States in order to be eligible to perform settlements for U.S. licensed vessels. See, however, Section 3.11.

(c) Prior experience in maritime accounting, general commercial accounting, international shipping or any other related endeavor will be taken into consideration by the Commission in certifying accounting authorities. The lack of such expertise, however, will not automatically disqualify an individual, partnership, corporation or other entity from becoming an accounting authority.

(d) Applicants must provide formal financial statements or documentation proving all assets, liabilities, income and expenses.

(e) Applicants must be willing to offer their services to the public at a reasonable charge. This requirement will be waived for applicants who settle their own accounts *only* and are eligible to be ''grandfathered'' during the initial application period. However, should the need for additional accounting authorities be proven, these accounting authorities will be required to offer their services to the public or relinquish their certification.

§ 3.11 Location of settlement operation.

(a) Within the United States. A certified accounting authority maintaining all settlement operations, as well as associated documentation, within the United States will be assigned an AAIC with a ''US'' prefix.

(b) Outside the United States. A certified accounting authority maintaining settlement operations outside the United States will be assigned the same AAIC as that originally assigned to such entity by the administration of the country of origin. However, in no case will an entity be

[1] At the ITU Additional Plenipotentiary Conference in Geneva (December, 1992), the structure, working methods and construct of the basic ITU treaty instrument were modified. The result is that the names of the sub-entities of the ITU have changed (e.g., the CCITT has become the Telecommunication Standardization Sector—ITU–T and Recognized Private Operating Agency has become Recognized Operating Agency-ROA). The changes were placed into provisional effect on March 1, 1993 with the formal entry into force of these changes being July 1, 1994. We will refer to the new nomenclatures within these rules, wherever practicable.

[2] Id.

certified as an accounting authority for settlement of U.S. licensed vessel accounts unless the entity is requesting to conduct a settlement operation in the United States or has already been issued an AAIC by another administration.

Application Procedures

§ 3.20 Application form.

Written application must be made to the Federal Communications Commission on FCC Form 44, ''Application For Certification As An Accounting Authority'' in order to be considered for certification as an accounting authority. No other application form may be used. No consideration will be given to applicants not submitting applications in accordance with these rules or in accordance with any other instructions the Commission may issue. FCC Form 44 may be obtained from the Commission by writing to the address shown in Section 3.61.

§ 3.21 Order of consideration.

(a) Accounting Authority applications will be processed on a first-come, first-served basis. When applications are received on the same day, the application with the earliest mailing date, as evidenced by the postmark, will be processed first. Interim accounting authorities seeking permanent certifications through the ''grandfathering'' process will not compete with other applicants during the first 60 days following the effective date of these rules which is allowed for submission of their applications. After the ''grandfathering'' process is completed, all other applicants will be processed as in paragraph (a) of this section.

(b) At any given time, there will be no more than 25 certified accounting authorities with a minimum of 15 ''US'' AAICs reserved for use by accounting authorities conducting settlement operations within the United States. The Commission will retain all valid applications received after the maximum number of accounting authorities have been approved and will inform such applicants that should an AAIC become available for reassignment in the future, the Commission will conditionally certify as an accounting authority the oldest of the qualified pending applicants, as determined by the order of receipt. Final certification would be conditional upon filing of an amended application (if necessary). The Commission will inform the applicant of his/her conditional selection in writing to confirm the applicant's continued interest in becoming an accounting authority.

§ 3.22 Number of accounting authority identification codes per applicant.

(a) No entity will be entitled to or assigned more than one AAIC.

(b) AAICs may not be reassigned, sold, bartered or transferred and do not convey upon sale or absorption of a company or firm without the express written approval of the Commission. Only the FCC may certify accounting authorities and assign U.S. AAICs for entities settling accounts of U.S. licensed vessels in the maritime mobile and maritime mobile-satellite services.

(c) Accounting authorities who are ''grandfathered'' during the initial application period may retain their interim AAIC.

§ 3.23 Legal applicant.

The application shall be signed by the individual, partner or primary officer of a corporation who is legally able to obligate the entity for which he or she is a representative.

§ 3.24 Evidence of financial responsibility.

All applicants must provide evidence of sound financial status. To the extent that the applicant is a business, formal financial statements will be required. Other applicants may submit documentation proving all assets, liabilities, income and expenses which supports their ability to meet their personal obligations. Applicants must provide any additional information deemed necessary by the Commission.

§ 3.25 Number of copies.

One original and one copy of FCC Form 44, ''Application For Certification As An Accounting Authority'' will be required. Only applications mailed to the Commission on official, Commission approved application forms will be considered. Applications should be mailed at least 90 days prior to planned commencement of settlement activities to allow time for the Commission to review the application and to allow for the informal public comment period.

§ 3.26 Where application is to be mailed.

All applications shall be mailed to the Accounting Authority Certification Officer in Washington, D.C. The designated address will be provided on the FCC Form 44, ''Application for Certification As An Accounting Authority''.

§ 3.27 Amended application.

Changes in circumstances that cause information previously supplied to the FCC to be incorrect or incomplete and that could affect the approval process, require the submission of an amended application. The amended application should be mailed to the Commission immediately following such change. See also Sections 3.24 and 3.51.

§ 3.28 Denial of privilege.

(a) The Commission, in its sole discretion, may refuse to grant an application to become an accounting authority for any of the following reasons:

(1) Failure to provide evidence of acceptable financial responsibility;

(2) If the applicant, in the opinion of the FCC reviewing official, does not possess the qualifications necessary to the proper functioning of an accounting authority;

(3) Application is not personally signed by the proper official(s);

(4) Applicant does not provide evidence that accounting operations will take place in the United States or its territories and the applicant does not already possess an AAIC issued by another administration;

(5) Application is incomplete, the applicant fails to provide additional information requested by the Commission or the applicant indicates that it cannot meet a particular provision; or

(6) When the Commission determines that the grant of an authorization is contrary to the public interest.

(b) These rules provide sufficient latitude to address defects in applications. Entities seeking review should follow procedures set forth in Sections 1.106 or 1.115 of this chapter.

§ 3.29 Notifications.

(a) The Commission will publish the name of an applicant in a Public Notice before granting certification and will invite informal public comment on the qualifications of the applicant from any interested parties. Comments received will be taken into consideration by the Commission in making its determination as to whether to approve an applicant as an accounting authority. Thirty days will be allowed for submission of comments.

(b) The Commission will notify each applicant in writing as to whether the applicant has been approved as an accounting authority. If the application is not approved, the Commission will provide a brief statement of the grounds for denial.

(c) The names and addresses of all newly certified accounting authorities will be published in a Public Notice issued by the Commission. Additionally, the Commission will notify the ITU within 30 days of any changes to its approved list of accounting authorities.

Settlement Operations

§ 3.40 Operational requirements.

All accounting authorities must conduct their operations in conformance with the provisions contained in this section and with relevant rules and guidance issued from time to time by the Commission.

§ 3.41 Amount of time allowed before initial settlements.

An accounting authority must begin settling accounts no later than six months from the date of certification. Failure to commence settlement operations is cause for suspension or cancellation of an accounting authority certification.

§ 3.42 Location of processing facility.

Settlement of maritime mobile and maritime mobile-satellite service accounts must be performed within the United States by all accounting authorities possessing the ''US'' prefix. Other accounting authorities approved by the Commission may settle accounts either in the U.S. or elsewhere. See also Sections 3.11 and 3.21(b).

§ 3.43 Applicable rules and regulations.

Accounting authority operations must be conducted in accordance with applicable FCC rules and regulations, the International Telecommunication Regulations (ITR), and other international rules, regulations, agreements, and, where appropriate, ITU–T Recommendations. In particular, the following must be adhered to or taken into account in the case of ITU–T.

(a) The latest basic treaty instrument(s) of the International Telecommunication Union (ITU);

(b) Binding agreements contained in the Final Acts of World Administrative Radio Conferences and/or World International Telecommunication Conferences;

(c) ITU Radio Regulations;

(d) ITU International Telecommunication Regulations (ITR);

(e) ITU–T Recommendations (particularly D.90 and D.195); and

(f) FCC Rules and Regulations (47 CFR Part 3).

§ 3.44 Time to achieve settlements.

All maritime telecommunications accounts should be timely paid in accordance with applicable ITU Regulations, Article 66 and International Telecommunication Regulations (Melbourne, 1988). Accounting authorities are deemed to be responsible for remitting, in a timely manner, all valid amounts due to foreign administrations or their agents.

§ 3.45 Amount of charges.

Accounting Authorities may charge any reasonable fee for their settlement services. Settlements themselves, however, must adhere to the standards set forth in these rules and must be in accordance with the International Telecommunication Regulations (ITR) taking into account the applicable ITU–T Recommendations and other guidance issued by the Commission.

§ 3.46 Use of gold francs.

An accounting authority must accept accounts presented to it from foreign administrations in gold francs. These gold francs must be converted on the date of receipt of the bill to the applicable Special Drawing Right (SDR) rate (as published by the International Monetary Fund) on that date utilizing the linking coefficient of 3.061 gold francs = 1 SDR. An equivalent amount in U.S. dollars must be paid to the foreign administration. Upon written concurrence by the FCC, an accounting authority may make separate agreements, in writing, with foreign administrations or their agents for alternative settlement methods, in accordance with ITU–T Recommendation D.195.

§ 3.47 Use of SDRs.

An accounting authority must accept accounts presented to it from foreign administrations in Special Drawing Rights (SDRs). These SDRs must be converted to dollars on the date of receipt by the accounting authority and an equivalent amount in US dollars must be paid to the foreign administration. The conversion rate will be the applicable rate published by the International Monetary Fund (IMF) for the date of receipt of the account from the foreign administration. Upon written concurrence by the FCC, any accounting authority may make separate agreements, in writing, with foreign administrations or their agents for alternative settlement methods, provided account is taken of ITU–T Recommendation D.195.

§ 3.48 Cooperation with the Commission.

Accounting authorities must cooperate fully with the FCC in all respects concerning international maritime settlements issues, including the resolution of questions of fact or other issues arising as a result of settlement operations.

§ 3.49 Agreement to be audited.

Accounting authorities accept their certifications on condition that they are subject to audit of their settlement activities by the Commission or its representative. Additionally, the Commission reserves the right to verify any statement(s) made or any materials submitted to the Commission under these rules. Verification may involve discussions with ship owners or others as well as the requirement to submit additional information to the Commission. Failure to respond satisfactorily to any audit findings is grounds for forfeiture or suspension or cancellation of authority to act as an accounting authority for U.S. vessels.

§ 3.50 Retention of settlement records.

Accounting authorities must maintain, for the purpose of compliance with these rules, all settlement records for a period of at least seven years following settlement of an account with a foreign administration or agent.

§ 3.51 Cessation of operations.

The FCC must be notified immediately should an accounting authority plan to relinquish its certification or cease to perform settlements as authorized. Additionally, the Commission must be advised in advance of any proposed transfer of control of an accounting authority's firm or organization, by any means, to another entity.

(a) When an accounting authority is transferred, merged or sold, the new entity must apply for certification in its own right if it is interested in becoming an accounting authority. Provided the new applicant is eligible and completes the application process satisfactorily, the AAIC will be transferred to the new applicant. In the case of a merger of two accounting authorities, the merged entity must decide which AAIC to retain.

(b) Section 3.21(a) will be waived for these applicants.

(c) The applicant must comply with application process including public comment.

(d) The applicant must certify acceptance of all accounts and must furnish a list of the accounts to the Commission at the time of application.

§ 3.52 Complaint/inquiry resolution procedures.

(a) Accounting authorities must maintain procedures for resolving complaints and/or inquiries from its contractual customers (vessels for which it performs settlements), the FCC, the ITU, and foreign administrations or their agents. These procedures must be available to the Commission upon request.

(b) If a foreign administration requests assistance in collection of accounts from ships licensed by the FCC, the

appropriate accounting authority will provide all information requested by the Commission in a timely manner to enable the Commission to determine the cause of the complaint and to resolve the issue. If accounts are in dispute, the Commission will determine the amount due the foreign administration, accounting authority or ROA, and may direct the accounting authority to pay the accounts to the foreign administration. If the accounting authority does not pay the disputed accounts within a reasonable timeframe, the Commission may take action to levy a forfeiture, cancel the AAIC privilege and/or to revoke any operating authority or licenses held by that accounting authority. (See also Section 3.72).

§ 3.53 FCC notification of refusal to provide telecommunications service to U.S. registered vessel(s).

An accounting authority must inform the FCC immediately should it receive notice from any source that a foreign administration or facility is refusing or plans to refuse legitimate public correspondence to or from any U.S. registered vessel.

§ 3.54 Notification of change in address.

The Commission must be notified in writing within 15 days of any change in address of an accounting authority. Such written notification should be sent to the address shown in Section 3.61.

Reporting Requirements

§ 3.60 Reports.

(a) Initial Inventory of Vessels. Within 60 days after receiving final approval from the FCC to be an accounting authority, each certified accounting authority must provide to the FCC an initial list of vessels for which it is performing settlements. This list should contain only U.S. registered vessels. Such list shall be typewritten or computer generated, be annotated to indicate it is the initial inventory and be in the general format of the following and provide the information shown:

Vessel Name	*Call Sign*

(b) Semi-Annual Additions/Modifications/Deletions to Vessel Inventory. Beginning with the period ending on the last day of March or September following submission of an accounting authority's Initial Inventory of Vessels (See paragraph (a) of this section.) and each semi-annual period thereafter, each accounting authority is required to submit to the FCC a report on additions, modifications or deletions to its list of vessels for which it is performing or intending to perform settlements, whether or not settlements actually have taken place. The list should contain only U.S. registered vessels. The report shall be typewritten or computer generated and be in the following general format:

ADDITIONS TO CURRENT VESSEL INVENTORY

Vessel Name	*Call Sign*	*Effective Date*

MODIFICATIONS TO CURRENT VESSEL INVENTORY

Previous Vessel Name	*Previous Call Sign*	*New Vessel Name*	*New Call Sign*	*Effective Date*

DELETIONS TO CURRENT VESSEL INVENTORY

Vessel Name	*Call Sign*	*Effective Date*

The preceding report must be received by the Commission no later than 15 days following the end of the period (March or September) for which the report pertains. Modifications refer to changes to call sign or ship name of vessels for which the accounting authority settles accounts and for which basic information has previously been provided to the Commission. Reports are to be submitted even if there have been no additions, modifications or deletions to vessel inventories since the previous report. If there are no changes to an inventory, this should be indicated on the report.

(c) End of Year Inventory. By February 1st of each year, each accounting authority must submit an end-of-year inventory report listing vessels for which the accounting authority performed settlements as of the previous December 31st. The list should contain only U.S. registered vessels. The report must be typewritten or computer generated and prepared in the same general format as that shown in paragraph (a) of this section except it should be annotated to indicate it is the End of Year inventory.

(d) Annual Statistical Report of Settlement Operations. By February 1st of each year, each accounting authority settling accounts for U.S. registered vessels must submit to the FCC an Annual Statistical Report, FCC Form 45, which details the number and dollar amount of settlements, by foreign administration, during the preceding twelve months. Information contained in this report provides statistical data that will enable the Commission to monitor operations to ensure adherence to these rules and to appropriate international settlement procedures. FCC Form 45 can be obtained by writing to the address in 3.61 of these rules.

§ 3.61 Reporting address.

All reports must be received at the following address no later than the required reporting date:

Accounting Authority Certification Officer, Financial Operations Division, Stop 1110A, Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554

§ 3.62 Request for confidentiality.

Applicants should comply with Section 0.459 of this chapter when requesting confidentiality and cannot assume that it will be offered automatically.

Enforcement

§ 3.70 Investigations.

The Commission may investigate any complaints made against accounting authorities to ensure compliance with the Commission's rules and with applicable ITU Regulations and other international maritime accounting procedures.

§ 3.71 Warnings.

The Commission may issue written warnings or forfeitures to accounting authorities which are found not to be operating in accordance with established rules and regulations. Warnings will generally be issued for violations which do not seriously or immediately affect settlement functions or international relations. Continued or unresolved violations may lead to further enforcement action by the Commission, including any or all legally available sanctions, including but not limited to, forfeitures (Communications Act of 1934, Sec. 503), suspension or cancellation of the accounting authority certification.

§ 3.72 Grounds for further enforcement action.

(a) The Commission may take further enforcement action, including forfeiture, suspension or cancellation of an accounting authority certification, if it is determined that the public interest so requires. Reasons for which such action may be taken include, inter alia:

(1) Failure to initiate settlements within six months of certification or failure to perform settlements during any subsequent six month period;

(2) Illegal activity or fraud;

(3) Non-payment or late payment to a foreign administration or agent;

(4) Failure to follow ITR requirements and procedures;

(5) Failure to take into account ITU-T Recommendations;

(6) Failure to follow FCC rules and regulations;

(7) Bankruptcy; or

(8) Providing false or incomplete information to the Commission or failure to comply with or respond to requests for information.

(b) Prior to taking any of the enforcement actions in paragraph (a) of this section, the Commission will give notice of its intent to take the specified action and the grounds therefor, and afford a 30-day period for a response in writing; provided that, where the public interest so requires, the Commission may temporarily suspend a certification pending completion of these procedures. Responses must be forwarded to the Accounting Authority Certification Officer. See Section 3.61.

§ 3.73 Waiting period after cancellation.

An accounting authority whose certification has been cancelled must wait a minimum of three years before reapplying to be an accounting authority.

§ 3.74 Ship stations affected by suspension, cancellation or relinquishment.

(a) Whenever the accounting authority privilege has been suspended, cancelled or relinquished, the accounting authority is responsible for immediately notifying all U.S. ship licensees for which it was performing settlements of the circumstances and informing them of the requirement contained in paragraph (b) of this section.

(b) Those ship stations utilizing an accounting authority's AAIC for which the subject accounting authority certification has been suspended, cancelled or relinquished, should make contractual arrangements with another properly authorized accounting authority to settle its accounts.

(c) The Commission will notify the ITU of all accounting authority suspensions, cancellations and relinquishments, and

(d) The Commission will publish a Public Notice detailing all accounting authority suspensions, cancellations and relinquishments.

§ 3.75 Licensee's failure to make timely payment.

Failure to remit proper and timely payment to the Commission or to an accounting authority may result in one or more of the following actions against the licensee:

(a) Forfeiture or other authorized sanction.

(b) The refusal by foreign countries to accept or refer public correspondence communications to or from the vessel or vessels owned, operated or licensed by the person or entity failing to make payment. This action may be taken at the request of the Commission or independently by the foreign country or coast station involved.

(c) Further action to recover amounts owed utilizing any or all legally available debt collection procedures.

§ 3.76 Licensee's liability for payment.

The U.S. ship station licensee bears ultimate responsibility for final payment of its accounts. This responsibility cannot be superseded by the contractual agreement between the ship station licensee and the accounting authority. In the event that an accounting authority does not remit proper and timely payments on behalf of the ship station licensee:

(a) The ship station licensee will make arrangements for another accounting authority to perform future settlements, and

(b) The ship station licensee will settle any outstanding accounts due to foreign entities.

(c) The Commission will, upon request, take all possible steps, within the limits of applicable national law, to ensure settlement of the accounts of the ship station licensee. As circumstances warrant, this may include issuing warnings to ship station licensees when it becomes apparent that an accounting authority is failing to settle accounts. See also Sections 3.70 through 3.74.

[FR Doc. 96–10974 Filed 5–03–96; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–42; Notice 2]

RIN 2127–AF67

Federal Motor Vehicle Safety Standards; Seat Belt Assemblies; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document rescinds the colorfastness requirements for seat belt assemblies. The purpose of those requirements is to ensure that motorists are not discouraged from using safety belts out of a concern that the belts will transfer their coloring to the motorists' clothing. NHTSA concludes that manufacturer concerns about public acceptance are sufficient by themselves to ensure that manufacturers will continue to make their belts colorfast. Therefore, retention of the requirements is not necessary.

DATES: *Effective Date:* The amendments made in this rule are effective June 20, 1996.

Applicability Date: Seat belt assemblies manufactured after June 20, 1996 are not required to meet the colorfastness requirements.

Petition Date: Any petitions for reconsideration must be received by NHTSA no later than June 20, 1996.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590:

For non-legal issues: Clarke Harper, Office of Vehicle Safety Standards, NPS–12, telephone (202) 366–4916, facsimile (202) 366–4329, electronic mail ''charper@nhtsa.dot.gov''.

For legal issues: Mary Versailles, Office of the Chief Counsel, NCC–20, telephone (202) 366–2992, facsimile (202) 366–3820, electronic mail ''mversailles@nhtsa.dot.gov''.

SUPPLEMENTARY INFORMATION: Pursuant to the March 4, 1995 directive, ''Regulatory Reinvention Initiative,'' from the President to the heads of departments and agencies, NHTSA undertook a review of all its regulations and directives. During the course of that review, the agency identified several requirements and regulations as being potential candidates for rescission. On June 19, 1995, the agency published an NPRM proposing the rescission of several of those candidate requirements, including the colorfastness requirements in Standard No. 209, ''Seat Belt Assemblies'' (60 FR 31946).

In the NPRM, NHTSA noted that it had included the colorfastness requirements in Standard No. 209 out of concern that occupants would be less likely to wear their seat belt if a lack of colorfastness of the webbing damaged their clothing. Paragraphs S4.2 (g) and (h) of the Standard require seat belt webbing to resist transferring color to a wet or dry crock cloth and to resist

staining (the colorfastness requirements). Test procedures for determining compliance with the colorfastness requirements are found in S5.1 (g) and (h) of the Standard.

NHTSA tentatively concluded in the NPRM that market forces would be sufficient, in the absence of the current requirements, to induce seat belt manufacturers to use webbing that will not stain clothing. The agency noted that it was not aware of any basis for believing that rescission of the colorfastness requirements would lessen colorfastness or safety.

Therefore, NHTSA proposed to delete the colorfastness requirements from Standard No. 209. NHTSA also proposed to delete references to these requirements in Standard No. 213, ''Child Restraint Systems.''

The agency received 5 comments in response to the NPRM. The commenters were: the Industrial Fabrics Association International (IFAI), Chrysler, Volkswagen, the Automotive Occupant Restraints Council (AORC), and Ford.

Three commenters (IFAI, Chrysler, and Ford) supported the proposal, indicating that the colorfastness would be maintained voluntarily. Two commenters (Volkswagen and AORC) opposed rescission of the requirements. Volkswagen believed that rescission would not reduce the cost burden on manufacturers as they would have to ensure colorfastness regardless. AORC opposed rescission more adamantly because they believed that, while major manufacturers would continue to comply, smaller, less experienced manufacturers might use non-colorfast webbing. They believed that this would result in increased consumer dissatisfaction, increased non-use of safety belts, and increased injuries.

Because the comments were split, the agency contacted four additional sources not represented by the commenters: a safety belt manufacturer (Indiana Mills and Manufacturing), a child seat manufacturer (Gerry Baby Products Company), a test laboratory (Dayton T. Brown Testing), and a webbing manufacturer (Narricot Industries). The first three agreed that colorfastness would be voluntarily maintained. The webbing manufacturer expressed concern that market pressures could require it to reduce colorfastness to remain cost competitive.

After reviewing this information, the agency has decided to rescind the colorfastness requirements. The majority of the manufacturers who commented or were contacted indicated that they would voluntarily maintain colorfastness, even if they had concerns that some others might not. While NHTSA understands the concern that market pressures for reducing costs might lead to a lessening of colorfastness, the agency believes that there is a countervailing market force that will minimize the possibility and extent of any such lessening of colorfastness. If a problem with colorfastness were to occur, the affected consumers would complain to the responsible manufacturer and likely insist on having the belt replaced, rather than forgoing use of the belt. Further, this countervailing force is much greater than it was when the colorfastness requirements were originally adopted. The proportion of the driving population likely to notice and complain about lack of colorfastness has grown substantially since the 1970's. Belt use has increased from 18 percent in those years to 67 percent today. In part, this increase is a reflection of consumers' increased interest in safety and understanding of the contribution that seat belt use makes to safety. The increase also reflects the existence now of safety belt use laws in 49 states and of child safety seat use laws in all 50 states. Thus, further increases in belt use are anticipated.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This action has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures. NHTSA believes that there would be no gain or loss of safety benefits from Standards Nos. 209 and 213 as a result of rescission of the colorfastness requirements. NHTSA also believes there will be no cost increases or savings for manufacturers.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As explained above, NHTSA does not anticipate that this proposal will significantly economically impact small manufacturers, or small entities that purchase safety belts or vehicles.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no requirements for information collection associated with this final rule.

National Environmental Policy Act

NHTSA has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 571.209 [Amended]

2. Section 571.209 is amended by removing S4.2(g), S4.2(h), S5.1(g) and S5.1(h).

3. Section 571.213 is amended by revising S5.4.1(b) to read as follows:

§ 571.213 Standard No. 213; Child restraint systems.

* * * * *

S5.4.1 * * *

(b) Meet the requirements of S4.2 (e) and (f) of FMVSS No. 209 (§ 571.209); and

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Issued on April 29, 1996.

Ricardo Martinez,

Administrator.

[FR Doc. 96–11026 Filed 5–3–96; 8:45 am]

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49 CFR Part 571

[Docket No. 95–48; Notice 2]

RIN 2127–AF71

Federal Motor Vehicle Safety Standards; Wheel Nuts, Wheel Discs, and Hub Caps

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: In this final rule document, NHTSA rescinds the Federal motor vehicle safety standard on wheel nuts, wheel discs, and hub caps. This action is part of the agency's efforts to implement the President's Regulatory Reinvention Initiative to either eliminate regulations, if determined to be unnecessary, or to make them easier to understand and to apply. The agency takes this action based on several conclusions. It concludes that there is no safety problem. Further, the standard is unavoidably overly design-restrictive. Moreover, to the extent that there are any safety concerns regarding the practices of motorists in installing wheel nuts, wheel discs, and hub caps that have winged projections, the agency believes those concerns are more appropriately addressed by State laws which regulate vehicle use than by a Federal motor vehicle safety standard, which regulates the performance of new motor vehicles and motor vehicle equipment as manufactured.

DATES: *Effective Date:* This final rule is effective June 5, 1996.

Petitions for Reconsideration: Any petitions for reconsideration of this final rule must be received by NHTSA no later than June 20, 1996.

ADDRESSES: Any petition for reconsideration of this final rule should refer to the docket and notice number set forth in the heading of this notice and be submitted to: Administrator, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: For technical issues: Mr. Clarke Harper, Office of Crashworthiness, NHTSA, telephone (202) 366–4916, FAX number (202) 366–4329. Mr. Harper's e-mail address is charper@nhtsa.dot.gov.

For legal issues: Ms. Dorothy Nakama, Office of Chief Counsel, NCC–20, telephone (202) 366–2992, FAX (202) 366–3820.

Both may be reached at the National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Comments should not be sent or faxed to these persons, but should be sent to the Docket Section.

SUPPLEMENTARY INFORMATION:

President's Regulatory Reinvention Initiative

Pursuant to the March 4, 1995 directive ''Regulatory Reinvention Initiative'' from the President to the heads of departments and agencies, NHTSA undertook a review of its regulations and directives. During the course of this review, NHTSA identified certain regulations that could be rescinded as unnecessary. Among these regulations is Federal Motor Vehicle Safety Standard No. 211, *Wheel Nuts, Wheel Discs, and Hub Caps* (49 CFR § 571.211). In the following section, NHTSA describes how it reviewed the background of the standard, and explains why it came to the conclusion that the safety problem is a minor one, that Standard No. 211 is unavoidably overly design-restrictive, and that wheel nuts, wheel discs, and hub caps having winged projections are more appropriately addressed by State laws which regulate vehicle use than by a Federal motor vehicle safety standard, which regulates new motor vehicles and motor vehicle equipment. For these reasons, NHTSA rescinds Standard No. 211.

Background

Standard No. 211 was issued in 1967 (32 FR 2408) as one of the initial Federal Motor Vehicle Safety Standards. Since Standard No. 211 applies to motor vehicles and motor vehicle equipment, both vehicle manufacturers and manufacturers of motor vehicle equipment must meet the requirements of Standard No. 211. For many years, Standard No. 211 prohibited all wheel nuts, wheel discs, and hub caps (referred to generically hereafter as ''hub caps'') that incorporate ''winged projections,'' based on a concern that such projections can pose a hazard to pedestrians and cyclists.

On January 15, 1993, NHTSA published in the Federal Register (58 FR 4582) a final rule amending Standard No. 211 to permit ''winged projections'' on hub caps if, when the hub caps are installed on a wheel rim, the projections do not extend beyond the plane of the wheel rim. NHTSA amended Standard No. 211 after concluding that ''winged projections'' that do not extend beyond the plane of the wheel do not compromise pedestrian or cyclist safety. Persons who are interested in a more detailed explanation for that conclusion are referred to the January 1993 final rule and the preceding notice of proposed rulemaking (57 FR 24207, June 8, 1992).

The January 1993 amendment was the culmination of a rulemaking proceeding initiated in response to a petition for rulemaking submitted by several hub cap manufacturers. After the amendment was published, however, NHTSA received information from John Russell Deane III, an attorney representing the petitioners, indicating that the amendment did not provide the regulatory relief that had been requested by the petitioners and anticipated by the agency in issuing the amendment.

Mr. Deane stated that certain preambular language in the January 1993 final rule suggested that manufacturers may manufacture and distribute hub caps incorporating winged projections only if the manufacturer is sure the product does not fit ''any other combinations'' of axles and wheel rims which would result in the projections extending beyond the plane of the wheel. He stated, however, that a typical decorative hub cap incorporating winged projections has a standardized attachment design which is identical to wingless hexagonal cap attachment designs. In other words, the method of attaching adapters to wheels is essentially standardized. Thus, the winged hub caps could be installed on any wheels, not only on deep wheels on which they would not extend beyond the plane of the wheel, but also shallower wheels on which the projections would protrude beyond such plane. Mr. Deane therefore concluded that ensuring compliance of decorative hub caps incorporating winged projections on all wheels would be virtually impossible, and that the practical effect of the amendment is to continue to prevent the manufacture and distribution of hub caps incorporating winged projections.

After reexamining the regulatory language, NHTSA concluded Mr. Deane was correct. The regulatory language requires that each hub cap with winged projections, as used in any *physically compatible* combination of axle and wheel rim, may not extend beyond the plane of the wheel. NHTSA determined the dilemma could be addressed only by amending the regulatory language, not,

as Mr. Deane suggested, by issuing a letter of clarification. (A more detailed explanation of the issue is provided in NHTSA's June 19, 1995 notice of proposed rulemaking (60 *FR* 31947).)

Notice of Proposed Rulemaking To Rescind Standard No. 211

In reviewing Standard No. 211 under the President's directive, NHTSA was faced with a regulation that had the practical effect of preventing the manufacture of all hubcaps with winged projections, notwithstanding the fact that the agency concluded that such hubcaps only pose a potential safety concern when used in circumstances in which the winged projections extend beyond the plane of the wheel. NHTSA strongly believes that its safety standards should not be overly design-restrictive and therefore considered whether the current standard, or any safety standard, is both an effective and appropriate means of addressing the safety of winged projections that extend beyond the plane of the wheel.

The agency tentatively concluded that the language of Standard No. 211 is not an appropriate means to ensure safe use of hub caps incorporating winged projections. Therefore, on June 19, 1995 (60 *FR* 31947), NHTSA published a notice of proposed rulemaking (NPRM) to rescind Standard No. 211. In the NPRM, NHTSA tentatively concluded that the potential safety concern primarily relates to how hub caps with winged projections are installed, rather than how they are manufactured, and that the issue is therefore more appropriately addressed by the States than by a Federal motor vehicle safety standard. The agency therefore proposed to rescind Standard No. 211.

First, NHTSA stated its belief that, because of product liability considerations, it is in the interest of vehicle manufacturers not to install unsafe hub caps, such as those with winged projections extending beyond the plane of the wheel, on their new vehicles. Vehicle manufacturers can ensure that winged hub caps are not installed in unsafe hub cap/wheel combinations since they can control which combinations are authorized. The only potential safety concern therefore relates to the availability and installation of aftermarket winged hub caps.

Second, as discussed above, the regulatory dilemma facing NHTSA is that hub caps with winged projections that are safe for relatively deep wheels, since the projections do not extend beyond the plane of those wheels, might be unsafe on other, shallower wheels. While the agency recognizes that a total ban on hub caps with winged projections would ensure safety, it would also be overly restrictive on vehicle and hub cap design.

The agency proposed to solve this dilemma by ceasing to regulate the manufacture of hub caps incorporating winged projections and leaving it to the States to regulate the installation of hub caps incorporating winged projections. The potential safety problem is not how such hub caps are manufactured but instead how they are installed; i.e., whether they are installed on wheels shallow enough to cause the winged projections to extend beyond the plane of the wheel. While NHTSA does not have the authority to regulate the use of vehicles, the States do. Moreover, all States already regulate the use of vehicles and, to the extent that the States determine that regulations are needed in this area, they can issue ones which are not unnecessarily design-restrictive. The States can do this by simply prohibiting the installation or use of hub caps incorporating winged projections on wheels so shallow that the projections extend beyond the plane of the wheel.

Third, NHTSA stated its belief that rescission of Standard No. 211 would not compromise safety since the potential safety problem addressed by the standard has always been virtually nonexistent. Moreover, the agency stated its belief that, should there be any significant increase in the installation of hubcaps with winged projections in a manner that causes injuries to pedestrians, the States could address that problem through their motor vehicle use regulations.

Public Comments on the NPRM and NHTSA's Response

NHTSA received comments from the Insurance Institute for Highway Safety (IIHS), the Association of International Automobile Manufacturers (AIAM), Chrysler Corporation, the State of Connecticut and John Russell Deane III, on behalf of Consolidated International Automotive, Inc., Dayton Wheel Products and Gorilla Automotive Products. Mr. Deane enclosed copies of letters from 22 automotive parts manufacturers, wholesalers and retailers, all of which expressed support for rescinding Standard No. 211.

AIAM, Chrysler, Mr. Deane and the wheel industry representatives either favored rescission or did not oppose rescission of Standard No. 211. AIAM stated that since pedestrian safety is also a concern in Japan and Europe, ''[I]f the Standard were to be removed AIAM member companies would not provide wheel nuts, wheel discs, or hub caps that present a hazard.'' Mr. Deane agreed with NHTSA that product liability concerns will induce vehicle manufacturers not to install unsafe hub caps and will compel aftermarket manufacturers and installers to inform consumers of the ''intended use combinations'' and to install the equipment in accordance with that information. Mr. Deane did not specify what he meant by ''intended use combinations.'' NHTSA presumes that Mr. Deane meant limits recommended by hub cap manufacturers on combinations of wheel rims, axle lengths, and wheel depths, that are to be used in conjunction with a given hub cap incorporating winged projections. The automotive parts manufacturers and distributors did not provide any supporting data or raise any issues.

IIHS and Connecticut opposed rescinding Standard No. 211 and provided numerous reasons for their opposition. NHTSA addresses each of IIHS' and Connecticut's comments below.

Should NHTSA Retain Standard No. 211 and Impose More Design Restrictions

IIHS asserts that the way to protect the public from ''hazards created by a design that is safe in some configurations but not in others, is to limit the design choices to the safe ones.'' IIHS was concerned that NHTSA balanced the manufacturers' interests in having more design choices for hub caps versus public safety and decided in favor of the manufacturers. IIHS argues that no ''scintilla'' of evidence supports NHTSA's proposal. Similarly, Connecticut stated it would be ''[m]ore appropriate to relax the current standard in a way that would be less design restrictive.''

Neither IIHS nor Connecticut provided any data to show a safety problem associated with winged projections on wheels. Additionally, neither of them suggested how the agency might amend Standard No. 211 to make it less design restrictive and ''limit the design choices to the safe ones.'' As explained in the background section, NHTSA has attempted to find out how to limit design choices to the ''safe ones'' for the past three years. Since the agency has not been able to find a means other than outright prohibition of the hub caps incorporating winged projections and has found no evidence of a safety problem, the appropriate course of action is to rescind Standard No. 211.

State Law Issues

Two state law issues were raised in the public comments. First, the IIHS stated: ''The availability of potential state regulatory action and possible product liability suits to replace an existing [FMVSS] is not a sufficient basis to justify rescinding the standard.''

The factors mentioned by IIHS are not the primary basis for the rescission, but are additional considerations that weigh in favor of rescission. The primary issue is safety. IIHS believes that there is a risk to safety and that it is posed by the vehicle or equipment design. NHTSA believes that the design of the vehicle or equipment itself would not inherently create a risk to pedestrian or cyclist safety. It is the particular combination of components as assembled by consumers that determines whether a risk to safety is created.

NHTSA believes that Standard No. 211 as originally written (i.e., completely banning hub caps incorporating winged projections of any design) was unduly restrictive and that State regulation offers a less burdensome, more targeted alternative for achieving the same end. As stated in the NPRM, the same end could be achieved by States placing restrictions on the installation of winged hub caps on shallow wheels.

The second state law issue was raised by Connecticut. Connecticut stated that in the absence of Standard No. 211, the States would have to regulate. As a result, a vehicle manufacturer may have to meet as many as 50 different State requirements.

As stated in the NPRM (see 60 *FR* at 31948), NHTSA believes that States can issue regulations that do not directly regulate hub cap design but rather prohibit inappropriate installation of any wheel devices with winged projections, e.g., installation so that the projections extend beyond the plane of the wheel. If each State enacted a similar law prohibiting such installation, there would not be ''50 different state requirements.''

Product Liability

Connecticut appears to state that small aftermarket parts manufacturers are often unaware of or not concerned with product liability issues. According to the commenter, such small manufacturers are often not concerned about product liability because they are not aware of the possibility of liability until after the fact, i.e., until after they have been sued.

As NHTSA already noted in its response to IIHS, product liability factors are not the primary basis for this action. Further, the agency does not believe that small manufacturers or other small businesses are unresponsive to the potential product liability implications of hub caps incorporating winged projections being used in an unsafe manner, and causing injury. The prospect of product liability lawsuits is faced by any company doing business in the United States. As earlier noted, Mr. Deane, who represents many hub cap manufacturers, dealers, and suppliers, agreed with NHTSA that product liability concerns will induce vehicle manufacturers not to make any unsafe installations of hub caps incorporating winged projections and will induce aftermarket manufacturers and installers to inform consumers of suggested safe combinations and to install the equipment in accordance with safe use.

Possibility of Reintroducing a Winged Hub Cap Problem

IIHS commented that: ''NHTSA's proposal could reintroduce a problem that was eliminated by the original standard almost 30 years ago.''

NHTSA does not agree with IIHS' concern. IIHS offers no evidence to support its position. Data available to NHTSA indicate that a ''reintroduction'' of a problem is unlikely, because it has never been established that a problem existed in the first instance. In the 1992 NPRM to amend Standard No. 211, NHTSA examined various data sources to determine the extent of injuries from contact by pedestrians, motorcyclists, and bicyclists with wheels and hub caps, and to assess the potential for injuries if winged projections were incorporated on hub caps. NHTSA concluded: ''The data * * * do not indicate that since 1979, significant injury has been caused to pedestrians or cyclists as a result of accidental contact with wheels or hub caps.'' (57 *FR* at 24208). NHTSA has received no data or other information refuting the conclusions in the 1992 NPRM. No data relevant to the potential injury issue were offered in response to the June 1995 NPRM.

Effective Date

In the NPRM, NHTSA proposed that if a final rule rescinding Standard No. 211 is published, the effective date for the final rule be 45 days after publication in the Federal Register. The only commenter addressing this issue, Mr. Deane, favored the final rule taking effect 30 days after its publication in the Federal Register. NHTSA received no comments opposing an effective date 30 days after Federal Register publication. Thus, the agency determines that there is good cause shown that an effective date earlier than 180 days after issuance is in the public interest.

Rulemaking Analyses and Notices

1. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule was not reviewed under Executive Order 12866 (Regulatory Planning and Review). NHTSA has analyzed the impact of this rulemaking action and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. The final rule does not impose any costs or yield any significant savings. It instead relieves a restriction and thereby provides vehicle and equipment manufacturers with greater flexibility in the design and installation of wheel nuts, wheel discs, and hub caps. Moreover, consumers will likely have a greater choice of hub cap styles. The impacts will be so minimal that preparation of a full regulatory evaluation is not warranted.

2. Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. As explained above, the rule will not impose any new requirements but will relieve a restriction for hub caps with winged projections. The final rule will likely have a small beneficial effect on small manufacturers and dealers of motor vehicle equipment, since they will have greater flexibility in the types of hub caps they may manufacture and sell. Similarly, persons who purchase aftermarket hub caps will likely have a greater choice. For these reasons, small businesses, small organizations and small governmental units which purchase motor vehicles will not be significantly affected by the final rule. Accordingly, a final regulatory flexibility analysis has not been prepared.

3. Executive Order 12612 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The agency has determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

4. National Environmental Policy Act

The agency also has analyzed this final rule for the purpose of the National Environmental Policy Act, and determined that it will not have any

significant impact on the quality of the human environment.

5. Executive Order 12778 (Civil Justice Reform)

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, tires.

In consideration of the foregoing, 49 CFR part 571 is amended as set forth below:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 571.211 [Removed]

2. Section 571.211 is removed and reserved.

Issued on: April 30, 1996.

Ricardo Martinez,

Administrator.

[FR Doc. 96–11114 Filed 5–03–96; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 620

[Docket No. 960126016–6121–04; I.D. 042996F]

General Provisions for Domestic Fisheries; Extension of Emergency Fishing Closure in Block Island Sound

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

ACTION: Emergency interim rule; extension.

SUMMARY: In response to a request from the State of Rhode Island, NMFS is extending the emergency interim rule that closed a portion of Federal waters off the coast of the State of Rhode Island, in Block Island Sound subsequent to an oil spill. Fishing for and possession of lobsters in a small area east and north of Block Island will remain prohibited.

EFFECTIVE DATE: May 1, 1996, through July 23, 1996.

FOR FURTHER INFORMATION CONTACT: Daniel Morris, (508) 281–9388.

SUPPLEMENTARY INFORMATION: On January 19, 1996, an oil barge grounded and spilled more than 800,000 gallons (3.0 million liters) of heating oil into the waters of Block Island Sound, RI. On January 26, 1996, NMFS, at the request of and in conjunction with the State of Rhode Island, prohibited the harvest of seafood from an area of approximately 250 square miles (647 square km) in Block Island Sound. The original area of closure was announced and defined in an emergency interim rule published in the Federal Register on February 1, 1996 (61 FR 3602).

The Federal closure has been twice amended, effective on March 13, 1996 (61 FR 11164, March 19, 1996), and April 9, 1996 (61 FR 16401, April 15, 1996). The latter citation describes the current closure.

Following the oil spill, State officials, in consultation with Federal agencies and the responsible party, developed a protocol for reopening fisheries in the affected area. The protocol sets sampling, inspection, and analysis standards, which, if met, would ensure that seafood is wholesome and would provide a basis for reopening fisheries. In the most recent round of inspection, evidence of oil adulteration was found in lobster samples taken from the closed Federal waters. Therefore, the closure to fishing for and possessing lobsters in a small area east and north of Block Island is extended by 90 days or until the testing protocol is satisfied.

The New England Fishery Management Council (Council) has concurred in the extension of this emergency closure, so long as the extension complements the State's regulations and is implemented at the State's request.

Classification

Extension of the emergency interim rule is intended to prevent oil-adulterated lobsters from reaching consumers. Also, the extension does not change existing regulations. On these grounds, NMFS finds good cause to extend the emergency interim rule in accordance with section 305(c)(3)(B) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). It would be contrary to public interest to provide notice and opportunity for comment or to delay for 30 days the effective date of this action under authority at 5 U.S.C. 553(b)(B) and (d)(3).

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

This emergency rule extension has been determined to be not significant for the purposes of E.O. 12866.

This emergency rule extension is exempt from the procedures of the Regulatory Flexibility Act because this rule is not required to be issued with prior notice and opportunity for public comment.

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

Dated: April 30, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 96–11163 Filed 5–1–96; 10:02 am]

BILLING CODE 3510–22–F

50 CFR Part 661

[Docket No. 960429120–6120–01; I.D. 042496C]

RIN 0648–AI35

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; 1996 Management Measures and Technical Amendment

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

ACTION: Annual management measures for the ocean salmon fishery and technical amendment; request for comments.

SUMMARY: NMFS establishes fishery management measures for the ocean salmon fisheries off Washington, Oregon, and California for 1996 and for those salmon seasons opening earlier than May 1, 1997. Specific fishery management measures vary by fishery and area. The measures establish fishing areas, seasons, quotas, legal gear, recreational fishing days and catch limits, possession and landing restrictions, and minimum lengths for salmon taken in the exclusive economic

zone (3–200 nautical miles) off Washington, Oregon, and California. These management measures are intended to prevent overfishing and to apportion the ocean harvest equitably among treaty Indian and non-treaty commercial and recreational fisheries. The measures are intended to allow a portion of the salmon runs to escape the ocean fisheries to provide for spawning escapement and inside fisheries. This action also announces a technical amendment to modify the spawning escapement goal for Klamath River fall chinook salmon.

DATES: Effective from 0001 hours Pacific Daylight Time (P.d.t.), May 1, 1996, until the effective date of the 1997 management measures, as published in the Federal Register, except the amendment to the appendix to part 661 remains in effect indefinitely. Comments must be received by June 5, 1996.

ADDRESSES: Comments on the management measures may be sent to William Stelle, Jr., Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, WA 98115–0070; or Hilda Diaz-Soltero, Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213. Documents cited in this document are available on request.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, or Rodney R. McInnis at 310–980–4030.

SUPPLEMENTARY INFORMATION:

Background

The ocean salmon fisheries off Washington, Oregon, and California are managed under a ''framework'' fishery management plan (FMP). The framework FMP was approved in 1984 and has been amended five times (52 FR 4146, February 10, 1987; 53 FR 30285, August 11, 1988; 54 FR 19185, May 4, 1989; 56 FR 26774, June 11, 1991; 59 FR 23013, May 4, 1994). Regulations at 50 CFR part 661 provide the mechanism for making preseason and inseason adjustments to the management measures, within limits set by the FMP, by notification in the Federal Register.

These management measures for the 1996 and pre-May 1997 ocean salmon fisheries were recommended by the Pacific Fishery Management Council (Council) at its April 9–12, 1996 meeting.

Schedule Used to Establish 1996 Management Measures

In accordance with the FMP, the Council's Salmon Technical Team (STT) and staff economist prepared several reports for the Council, its advisors, and the public. The first report, ''Review of 1995 Ocean Salmon Fisheries,'' summarizes the 1995 ocean salmon fisheries and assesses how well the Council's management objectives were met in 1995. The second report, ''Preseason Report I Stock Abundance Analysis for 1996 Ocean Salmon Fisheries,'' provides the 1996 salmon stock abundance projections and analyzes the impacts on the stocks and Council management goals if the 1995 regulations or regulatory procedures were applied to the 1996 stock abundances.

The Council met on March 12–15, 1996, in Portland, OR, to develop proposed management options for 1996. Four commercial and four recreational fishery management options were proposed for analysis and public comment. These options presented various combinations of management measures designed to protect numerous weak stocks of coho and chinook salmon and provide for ocean harvests of more abundant stocks. All options provided for no directed harvest of chinook salmon in non-treaty fisheries north of Cape Falcon, OR, and no directed harvest of coho salmon south of Cape Falcon. After the March Council meeting, the STT and staff economist prepared a third report, ''Preseason Report II Analysis of Proposed Regulatory Options for 1996 Ocean Salmon Fisheries,'' which analyzes the effects of the proposed 1996 management options. This report also was made available to the Council, its advisors, and the public.

Public hearings on the proposed options were held April 1–2, 1996, in Westport, WA; Astoria and North Bend, OR; and Eureka, CA.

The Council met on April 9–12, 1996, in South San Francisco, CA, to adopt its final 1996 recommendations. Following the April Council meeting, the STT and staff economist prepared a fourth report, ''Preseason Report III Analysis of Council-Adopted Management Measures for 1996 Ocean Salmon Fisheries,'' which analyzes the environmental and socio-economic effects of the Council's final recommendations. This report also was made available to the Council, its advisors, and the public.

Resource Status

Some salmon runs returning to Washington, Oregon, and California streams in 1996 are expected to be larger than in 1995. Abundance of Klamath River fall chinook is estimated to be significantly higher than was projected in recent years, but lower than the actual abundance in 1995.

Aside from salmon species listed and proposed for listing under the Endangered Species Act (ESA) discussed below, the primary resource concerns are for lower Columbia River fall chinook stocks; Oregon Production Index area coho stocks destined for the Columbia River and the California and Oregon coasts, particularly Oregon coastal natural coho; and Washington coastal and Puget Sound natural coho. (The Oregon Production Index (OPI) is an annual index of coho abundance from Leadbetter Point, WA, south through California.) Management of all of these stocks is affected by interjurisdictional agreements among tribal, state, Federal, and/or Canadian managers.

Chinook Salmon Stocks

California Central Valley stocks are relatively abundant compared to other chinook stocks of the Pacific coast. The Central Valley Index of abundance of combined Central Valley chinook stocks is estimated to be 533,000 fish for 1996, 58 percent below the postseason estimate of the index for 1995 and 27 percent below the average of the index from 1986–1995. The spawning escapement of Sacramento River adult fall chinook was 267,800 adults in 1995, nearly twice the 1994 escapement and well above the spawning escapement goal range of 122,000 to 180,000 adult spawners.

Winter chinook from the Sacramento River are listed under the ESA as an endangered species (59 FR 440, January 4, 1994). The 1995 spawning run size was estimated to be approximately 1,300 adults. Neither preseason nor postseason estimates of ocean abundance are available for winter chinook, but the run is expected to remain extremely depressed in 1996 with a return comparable to the primary parent year of 1993 of about 300 adults.

Klamath River fall chinook ocean abundance is projected to be 454,700 age-3 and age-4 fish at the beginning of the fishing season. Although the abundance forecast is 25 percent below the 1995 postseason abundance estimate, it is 52 percent above the average postseason estimates for 1985–95. The spawning escapement goal for the stock is 33–34 percent of the potential natural adults but no fewer than 35,000 natural spawners (fish that spawn outside of hatcheries). The natural spawning escapement in 1995 was 150,600 adults, well above the 1994 escapement of 32,300 and the highest on record since 1978 when basinwide escapement estimates began.

Oregon coastal chinook stocks include south-migrating and localized stocks primarily from southern Oregon streams, and north-migrating chinook stocks which generally originate in central and northern Oregon streams. Abundance of south-migrating and localized stocks is expected to be low and similar to the levels observed in 1995. These stocks are important contributors to ocean fisheries off Oregon and northern California. The generalized expectation for north-migrating stocks is for a continuation of average to above-average abundance as observed in recent years. These stocks contribute primarily to ocean fisheries off British Columbia and Alaska. It is expected that the aggregate Oregon coastal chinook spawning escapement goal of 150,000 to 200,000 naturally spawning adults will be met in 1996.

Estimates of Columbia River chinook abundance vary by stock as follows.

1. *Upper Columbia River spring and summer chinook.* Numbers of upriver spring chinook predicted to return to the river in 1996 are 37,200 fish, 265 percent above the 1995 record low return of 10,200 adult fish, and 34 percent below the 1979–84 average of 56,600 fish. The 1996 stock status indicates some improvement from returns in 1994 and 1995 but suggests continuation of the depressed status of this stock. Recent improvements in 1985–90 and 1992–93 from the poor returns in the early 1980s are primarily the result of increases of hatchery stocks. The natural stock component remains severely depressed. Ocean escapement is expected to be significantly below the goal of 115,000 adults counted at Bonneville Dam. Upriver spring chinook are affected only slightly by ocean harvests in Council area fisheries, with the contribution of these stocks being generally 1 percent or less of the total chinook catch north of Cape Falcon, OR. Expected ocean escapement of adult upriver summer chinook is 16,800 fish, the third lowest on record. The 1996 stock status remains extremely depressed, with ocean escapement being only 21 percent of the lower end of the spawning escapement goal range of 80,000 to 90,000 adults counted at Bonneville Dam. Upriver summer chinook migrate to the far north and are not a major contributor to ocean fisheries off Washington and Oregon. Snake River spring and summer chinook are listed as threatened under the ESA (57 FR 14653, April 22, 1992).

2. *Willamette River spring chinook.* Willamette River spring chinook returns are projected to be 38,700 fish, 5 percent below the observed 1995 run of 40,900 fish, and 40 percent below the 1980–84 average return of 65,000 fish. Lower Columbia River spring chinook stocks are important contributors to Council area fishery catches north of Cape Falcon; Willamette River spring chinook stocks generally contribute to Canadian and Alaskan ocean fisheries.

3. *Columbia River fall chinook.* Abundance estimates are made for five distinct fall chinook stock units, as follows.

a. Upriver bright fall chinook ocean escapement is expected to be 88,900 adults, 21 percent below the 1995 actual return of 112,600 adults. The escapement goal for upriver bright fall chinook is 40,000 adults above McNary Dam, although in recent years the management goal has been set higher. This stock has a northern ocean migratory pattern and constitutes less than 10 percent of Council area fisheries north of Cape Falcon.

b. Lower river natural fall chinook ocean escapement is forecast at 8,800 adults, 44 percent below the 1995 run size of 15,800 adults.

c. Lower river hatchery fall chinook ocean escapement is forecast at a new record low of 37,700 adults, slightly above the 1995 preseason estimate of 35,800 adults but 18 percent below the 1995 observed return of 46,100 adults. This stock has declined sharply since the record high return in 1987 to a record low return in 1995. Lower Columbia River fall chinook stocks normally account for more than half the total catch in Council area fisheries north of Cape Falcon, with lower river hatchery fall chinook being the single largest contributing stock.

d. Spring Creek hatchery fall chinook ocean escapement is projected to be 26,700 adults, 19 percent below the 1995 return of 33,000 adults; the 1986–90 average ocean escapement was 16,700 adults. The Spring Creek hatchery fall chinook stock has been rebuilding slowly since the record low return in 1987.

e. Mid-Columbia bright fall chinook ocean escapement is projected to be 40,800 adults, 35 percent above the 1995 return of 30,300 adults. These fall chinook are returns primarily from hatchery releases of bright fall chinook stock in the area below McNary Dam, although some natural spawning in tributaries between Bonneville and McNary dams is also occurring.

4. *Snake River wild fall chinook.* Also of concern are Snake River wild fall chinook, which are listed as threatened under the ESA (57 FR 14653, April 22, 1992). Information on the stock's ocean distribution and fishery impacts is not available. Attempts to evaluate fishery impacts on Snake River fall chinook have used the Lyons Ferry Hatchery stock to represent Snake River wild fall chinook. The Lyons Ferry stock is widely distributed and harvested by ocean fisheries from southern California to Alaska.

Washington coastal and Puget Sound chinook generally migrate to the far north and are affected insignificantly by ocean harvests from Cape Falcon to the U.S.-Canada border.

Coho Salmon Stocks

Coho populations in California have not been monitored closely nor have they been a controlling factor in establishing ocean salmon management measures in the past. Although no forecasts of the ocean abundance of coho originating from California are available, these runs have been generally at low abundance levels for several years. California and Oregon coastal coho are proposed for listing as threatened under the ESA (60 FR 38011, July 25, 1995).

Oregon coastal and Columbia River coho stocks are the primary components of the OPI. Beginning in 1988, the Council adopted revised estimation procedures which were expected to more accurately predict abundance of the following individual OPI area stock components: Public hatchery, private hatchery, Oregon coastal natural (OCN) for rivers and lakes, and Salmon Trout Enhancement Program. Prediction methodologies are described in the Council's ''Preseason Report I Stock Abundance Analysis for 1988 Ocean Salmon Fisheries.'' In response to the extremely low abundances in 1994, some changes to the abundance predictors were implemented as described in the Council's ''Preseason Report I Stock Abundance Analysis for 1994 Ocean Salmon Fisheries.'' The 1996 OPI is forecast to be 372,800 coho, nearly the same as the 1995 preseason forecast of 369,800 coho, and 76 percent above the 1995 observed level of 212,300 coho. The 1996 estimate for OCN is 63,200 coho, 5 percent above the 1995 preseason forecast of 60,000 coho, and 4 percent below the 1995 observed level of 65,800 coho. The 1995 spawning escapement of the OCN stock was 131,300 fish.

Most Washington coastal natural coho stocks and Puget Sound combined natural coho stocks are expected to be less abundant in 1996 than forecast in 1995. Abundances for Washington coastal stocks of Hoh, Queets, and Grays Harbor natural coho are projected to be 38 percent below, 31 percent below, and 17 percent above the 1995 preseason predictions, respectively. Abundances

for Puget Sound stocks of Skagit, Stillaguamish, Hood Canal, and Strait of Juan de Fuca natural coho are projected to be below the 1995 preseason predictions by 31 percent, 27 percent, 31 percent, and 6 percent, respectively. Many natural coho run sizes are forecast to be well below maximum sustainable yield (MSY) spawning escapement goals. Abundance forecasts for coho hatchery production are well above 1995 expectations for most Washington coastal stocks and 18 percent above the 1995 forecast for Puget Sound combined stocks.

Pink Salmon Stocks

Major pink salmon runs return to the Fraser River and Puget Sound only in odd-numbered years. Consequently, pink salmon runs are not of management concern in 1996.

Management Measures for 1996

The Council adopted allowable ocean harvest levels and management measures for 1996 that are designed to apportion the burden of protecting the weak stocks discussed above equitably among ocean fisheries and to allow maximum harvest of natural and hatchery runs surplus to inside fishery and spawning needs. The management measures below reflect the Council's recommendations. NMFS concurs with these recommendations and finds them responsive to the goals of the FMP, the requirements of the resource, and the socio-economic factors affecting resource users. The management measures are consistent with requirements of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and other applicable law, including U.S. obligations to Indian tribes with Federally recognized fishing rights and the ESA.

A. South of Cape Falcon

In the area south of Cape Falcon, the management measures in this rule are based primarily on concerns for Sacramento River winter chinook, and California and OCN coho stocks.

In a March 8, 1996, biological opinion, NMFS evaluated the potential effects of the FMP on all salmonids that are listed under the ESA and that occur within the management area of the FMP. NMFS determined that the fisheries conducted under the FMP are likely to jeopardize the continued existence of listed salmon, particularly Sacramento River winter chinook (discussed in this section) and Snake River fall chinook (discussed in section B, North of Cape Falcon). The conclusion of jeopardy resulted, in part, because the FMP does not contain specific management objectives designed to protect and recover listed stocks.

The biological opinion identified a Reasonable and Prudent Alternative (RPA) to the proposed action to avoid jeopardy to the stocks. The RPA has three parts. First, the Council must adopt an amendment to the FMP by October of 1996, and NMFS must implement the amendment by May of 1997, to include management objectives for species that are currently listed under the ESA, consistent with immediate conservation needs and the long-term recovery of listed species. Second, pending completion of the FMP amendment, NMFS must reduce all harvest-related impacts to the Sacramento River winter chinook salmon population by a level that would achieve a 35 percent increase in spawner escapement from current levels. A reduction in incidental harvest impacts of approximately 50 percent is estimated to be necessary to achieve the needed increase in escapement. The third action pertains to Snake River fall chinook, which is discussed in section B, North of Cape Falcon.

In considering how best to reduce the ocean harvest of winter chinook, the STT recommended the use of increased minimum size limits in conjunction with restricted seasons. Because winter chinook are significantly smaller than Central Valley fall chinook, an increase in the minimum size is expected to result in relatively larger reductions in harvest impacts on winter chinook compared to fall chinook. The increases in minimum size limits (total length) off California range from 4 to 6 inches (10.2–15.2 cm) in the recreational fishery and 1 inch (2.5 cm) in the commercial fishery.

In addition to increased minimum size limits, new gear restrictions for recreational fisheries off California are being implemented that are intended to reduce hook-and-release mortality for fish less than the minimum size limit. Recreational anglers may use no more than one rod while fishing north of Point Conception, which is the same as the regulations off Oregon and Washington. Between Horse Mountain and Point Conception, special restrictions on the size, number, and placement of hooks are imposed when anglers are using the mooching instead of the trolling technique.

The reductions in fishery impacts to Sacramento River winter chinook, including non-landed mortality, necessary to achieve the 35 percent increase in spawning escapement required by the biological opinion are estimated using a Winter Chinook Ocean Harvest Model. The model was developed by the California Department of Fish and Game in consultation with NMFS and the U.S. Fish and Wildlife Service.

The 1996 preseason abundance estimate for OCN coho is 63,200 fish, a level that allows up to a 20 percent incidental exploitation rate under the FMP for combined ocean and inside fisheries. A 20 percent exploitation rate would be expected to result in a spawner escapement of 29 adults per mile on standard index surveys. The 1996 management measures result in a total OCN coho exploitation rate of 11–13 percent. The projected spawner escapement for 1996 is 32 adults per mile on standard index surveys. The Council's recommendations include time and area closures, and gear restrictions intended to minimize incidental fishing contact with OCN coho and subsequent hook-and-release mortality while allowing access to harvestable stocks of chinook salmon.

Klamath River fall chinook are significantly more abundant, allowing for more liberal seasons in the area between Humbug Mountain, OR, and Horse Mountain, CA, termed the Klamath management zone (KMZ), than in recent years. The Council's recommended measures provide for equal sharing of the harvest of Klamath River fall chinook between the Klamath River Indian Tribes and non-Indian fishermen.

The California Fish and Game Commission (Commission) regulates sport fishing in California waters. In a March 11, 1996 letter, the Commission notified the Council that it is considering a higher catch level for the 1996 in-river sport fishery than has existed in recent years and requested the Council consider an increase in the allocation for the in-river sport fishery from the current 12 percent to 18 percent of the non-tribal allocation. The Commission will set harvest levels for in-river sport fisheries at its June 1996 meeting. The Klamath River Fishery Management Council considered in-river sport allocations of 12, 15, and 18 percent and recommended to the Council and the Commission an in-river sport allocation of 15 percent. When the Council adopted management measures, it was not clear whether in-river sport fishery impacts were being modeled at 15 or 18 percent of the non-tribal allocation. Modeling by the STT subsequent to the issuance of the Council's recommendations indicates that the Council's recommended ocean seasons, in conjunction with an in-river sport harvest share of 18 percent and equal sharing between tribal and non-tribal fisheries, would not achieve the

spawning escapement goal for Klamath River fall chinook. An in-river sport harvest allocation of 15 percent is predicted to achieve the spawning escapement goal and provide equal sharing of the harvest between tribal and non-tribal fisheries. NMFS approval of the Council's recommendations is based on the assumption that the Commission will set an in-river sport harvest at 15 percent of the non-tribal allocation. Should the Commission approve an allocation higher than 15 percent, NMFS will implement adjustments to ocean fisheries designed to achieve the Klamath River fall chinook spawning escapement goal and provide for equal sharing between tribal and non-tribal fisheries.

Depending on the management structure for ocean salmon fisheries north of Cape Falcon, the Council recommended that inseason adjustments be considered for fisheries south of Cape Falcon consistent with management intent for stocks of concern.

Commercial Troll Fisheries

Retention of coho salmon is prohibited in all areas south of Cape Falcon. All seasons listed below are restricted to all salmon species except coho salmon. Minimum size limits (total length) for chinook salmon are as follows: Off Oregon, 26 inches (66.0 cm); and off California, 26 inches (66.0 cm) through June 30 and 27 inches (68.6 cm) thereafter.

From Point Reyes, CA, to the U.S.-Mexican border, the commercial fishery will open May 1 and continue through June 30, then reopen July 3 and continue through September 15. Gear is restricted to no more than six lines per vessel. From Bodega Head to Point San Pedro, CA, the commercial fishery will be open September 16 through September 30. Gear is restricted to no more than six lines per vessel.

From Point Arena to Point Reyes, CA, the commercial fishery will open June 1 and continue through June 30, then reopen August 1 and continue through September 15. Gear is restricted to no more than six lines per vessel.

From Horse Mountain to Point Arena, CA, the commercial fishery will open August 1 and continue through September 30. Gear is restricted to no more than six lines per vessel.

From the Oregon-California border to Humboldt South Jetty, CA, the commercial fishery will open August 15 and continue through the earlier of August 31 or attainment of the 2,500 chinook quota, then reopen September 1 and continue through the earlier of September 15 or attainment of the 6,000 chinook quota. Gear is restricted to no more than six lines per vessel. Other restrictions include a landing limit of 30 fish per day and closure of the Klamath Control Zone.

From Cape Arago, OR, to the Oregon-California border, the commercial fishery will open May 1 and continue through the earlier of June 30 or attainment of the 5,300 chinook quota. The fishery will follow a cycle of 4 days open and 3 days closed. The days open may be adjusted and landing limits may be instituted inseason if necessary to manage the fishery. Gear is restricted to no more than four spreads per line.

From Sisters Rocks to Mack Arch, OR, the commercial fishery will open August 3 and continue through the earlier of August 31 or attainment of the 3,000 chinook quota. The fishery will follow a cycle of 2 days open and 2 days closed. The days open may be adjusted and landing limits may be instituted inseason if necessary to manage the fishery. Gear is restricted to no more than four spreads per line, with the open area restricted to only 0–4 nautical miles (7.4 km) of shore. Participants must register by August 1 with the Oregon Department of Fish and Wildlife.

From Cape Arago to Humbug Mountain, OR, the commercial fishery will open August 7 and continue through the earlier of August 31 or attainment of the 8,800 chinook quota, then reopen September 1 and continue through the earlier of October 31 or attainment of the 10,000 chinook quota. Gear is restricted to no more than four spreads per line.

From Cape Falcon to Cape Arago, OR, the commercial fishery will open May 1 and continue through June 30, then reopen August 7 and continue through October 31. Gear is restricted to no more than four spreads per line.

Recreational Fisheries

Retention of coho salmon is prohibited in all areas south of Cape Falcon. Minimum size limits (total length) for chinook salmon are as follows: Between Cape Falcon, OR, and Horse Mountain, CA, 20 inches (50.8 cm); between Horse Mountain and Point Arena, CA, 24 inches (61.0 cm); between Point Arena and the U.S.-Mexican border, 24 inches (61.0 cm) through July 1 and 26 inches (66.0 cm) thereafter. Off California north of Point Conception, persons fishing for salmon and persons fishing from a boat with salmon on board are restricted to no more than one rod per angler. From Horse Mountain to Point Conception, CA, beginning July 1 the following restrictions apply when fishing with bait and any combination of weights measuring 1 pound or less: No more than 2 hooks may be used; when using 2 hooks, the terminal (lower) hook must be no less than 5/0 and the upper hook no less than 4/0, the distance between the 2 hooks must not exceed 5 inches (12.7 cm) and both hooks must be permanently tied in place (hard tied); if using a single hook, the hook size cannot be less than 5/0. Hook size restrictions do not apply when artificial lures are used or when bait is attached to an artificial lure. (An artificial lure is a man-made lure designed to attract fish, not including scented or flavored artificial baits.)

From Point Arena, CA, to the U.S.-Mexican border, the recreational fishery opened on March 2 (the nearest Saturday to March 1) for all salmon except coho (61 FR 8497, March 5, 1996). Continuation of this fishery is provided as follows: From Point San Pedro, CA, to the U.S.-Mexican border, the recreational fishery will continue through August 25 with a two-fish daily bag limit. From Point Arena to Point San Pedro, CA, the recreational fishery will continue through October 14 with a two-fish daily bag limit.

From Horse Mountain to Point Arena, CA, the recreational fishery for all salmon except coho which opened on February 17 (the nearest Saturday to February 15) will continue through July 7 then reopen August 1 and continue through November 17 (the nearest Sunday to November 15) with a two-fish daily bag limit for both seasons.

From Humbug Mountain, OR, to Horse Mountain, CA, the recreational fishery will open May 12 and continue through July 7, then reopen August 18 and continue through September 21. Both seasons include a one-fish daily bag limit, but no more than four fish in 7 consecutive days, and closure of the Klamath Control Zone.

From Cape Falcon to Humbug Mountain, OR, the recreational fishery will open May 1 through July 7, then reopen August 16 through September 30. Both seasons include a two-fish daily bag limit, but no more than six fish in 7 consecutive days. Legal gear is limited to artificial lures, plugs, or bait no less than 6 inches (15.2 cm) long (excluding hooks and swivels) with no more than two single point, single shank barbless hooks; flashers and divers are prohibited.

B. North of Cape Falcon

From the U.S.-Canadian border to Cape Falcon, ocean fisheries are managed to protect depressed lower Columbia River fall chinook salmon, Snake River fall chinook salmon, and Washington coastal and Puget Sound

natural coho salmon stocks. Ocean treaty and non-treaty harvests and management measures were based in part on negotiations between Washington State fishery managers, commercial and recreational fishing groups, and the Washington coastal, Puget Sound, and Columbia River treaty Indian tribes as authorized by the U.S. District Court in *U.S.* v. *Washington, U.S.* v. *Oregon,* and *Hoh Indian Tribe* v. *Baldrige.*

The Council recommended that all non-treaty commercial and recreational fisheries be closed north of Cape Falcon, absent an agreement between the United States and Canada on coho salmon harvest levels. For the purposes of modeling impacts and escapements for this regime, the west coast of Vancouver Island (WCVI) coho harvest was assumed to be 1.46 million coho, a harvest level which represents recent year average harvest rates with this year's abundance estimates. Total allowable harvest levels for treaty Indian troll fisheries would be 11,000 chinook and 12,500 coho. The treaty Indian coho quota could be modified under inseason management provisions, not to exceed 20,000 coho, upon agreement of relevant state and tribal fishery managers. Because there currently is no assurance that the WCVI harvest will be below 1.46 million coho, this regime is the one implemented in these annual management measures.

The Council also recommended two alternate management regimes for non-treaty and treaty Indian fisheries north of Cape Falcon based on lower catch expectations in the Canadian troll fishery off the WCVI. If either of these regimes is to be implemented inseason, NMFS will follow the inseason notice procedures described below. Due to low abundance of lower Columbia River fall chinook stocks, all three regimes prohibit the retention of chinook in non-treaty commercial and recreational fisheries.

1. The first contingency regime is if the Canadian harvest is anticipated to be in the range of 1.1 million to 1.3 million coho off WCVI, the total allowable harvest for non-treaty fisheries would be zero chinook and 75,000 coho (18,800 coho to the commercial fishery and 56,200 coho to the recreational fishery). For the purposes of modeling impacts and escapements for this contingency, the WCVI coho harvest was assumed to be 1.2 million coho, the midpoint of the range. The Regional Director would use the inseason management authority and process to implement the season structure recommended by the Council. Total allowable harvest levels for treaty Indian troll fisheries would be 11,000 chinook and 25,000 coho.

2. The second contingency regime is if the Canadian harvest is anticipated to be less than 1.1 million coho off WCVI, the Director, Northwest Region, NMFS is authorized to make inseason adjustments to modify the ocean quotas in the first contingency upon the recommendation of the States of Washington and Oregon and the treaty Indian tribes.

The Council recommended additional provisions to protect stocks of management concern should the second contingency regime cause coho quotas to be increased above the levels in the first contingency regime. Estimated impacts on OCN coho cannot be higher than those modeled for the season structure to be implemented for the first contingency, and at least 50 percent of any savings from reductions in harvest below 1.2 million coho are to be allocated to spawning escapement of critical coho stocks.

Since it is not known when understandings with Canada will be reached on the level of Canadian harvest, it is possible that little time could be available to implement either contingency. Therefore, these two contingencies are included in this action in order to simplify the implementation process for any inseason action and inform the public of the range of possible seasons.

The Council analyzed the impacts of the proposed seasons and contingencies on Snake River spring/summer and fall chinook stocks, which are listed as threatened species under ESA. For Snake River wild spring and summer chinook, the available information indicates that it is highly unlikely these fish are impacted by Council area fisheries. Pending implementation of an amendment to the FMP, NMFS and the Council must manage the ocean salmon fisheries within the Council's jurisdiction to ensure the impacts of the annual management measures on Snake River fall chinook meet the requirements of the March 8, 1996 biological opinion and RPA. Impacts of Council area fisheries are limited to no more than 50 percent of the 1988–93 average exploitation rate, or 70 percent for all United States and Canadian ocean fisheries combined. The STT estimated that under the Council's recommended management measures, impacts on Snake River fall chinook would be 63 percent of the base period average for all ocean fisheries, thus meeting the standard of no more than 70 percent.

Commercial Troll Fisheries

Non-treaty commercial troll fisheries north of Cape Falcon are closed in 1996. Should a contingency management regime be implemented inseason, the commercial fishery for all salmon except chinook between the U.S.-Canadian border and Leadbetter Point, WA, will open July 26 and continue through the earlier of September 30 or attainment of the 18,800 coho quota. The fishery will follow a cycle of 3 days open and 4 days closed, with a possession and landing limit of 75 coho per opening. The days open and the landing limit may be adjusted inseason if necessary to manage the fishery. The minimum size limit (total length) for coho salmon is 16.0 inches (40.6 cm). The commercial troll ocean quota for coho may be adjusted by inseason action if the Canadian harvest is anticipated to be less than 1.1 million coho off WCVI.

Recreational Fisheries

Recreational fisheries north of Cape Falcon are closed in 1996. Should a contingency management regime be implemented inseason, the recreational fisheries for all salmon except chinook will be divided into four subareas. Opening dates, subarea quotas, bag limits, and area restrictions are described below. The fisheries in all subareas will close the earlier of September 26 or on attainment of the subarea coho salmon quota. The minimum size limit (total length) for coho salmon is 16.0 inches (40.6 cm). The recreational ocean quotas (overall and subarea) for coho may be adjusted by inseason action if the Canadian harvest is anticipated to be less than 1.1 million coho off WCVI.

From the Queets River to Leadbetter Point, WA, and from Leadbetter Point, WA, to Cape Falcon, OR, the fishery will open July 22 with coho subarea quotas of 20,800 and 28,100, respectively. Both subareas will be open Sunday through Thursday only, with a two-fish daily bag limit, but no more than four fish in 7 consecutive days, and closed 0–3 miles (4.8 km) of shore north of the Columbia Control Zone and in the Columbia Control Zone.

From Cape Alava to the Queets River, WA, the fishery will open August 5 with a 1,500 coho subarea quota. The fishery will be open 7 days per week with a two-fish daily bag limit, and closed 0–3 miles (4.8 km) of shore.

From the U.S.-Canadian border to Cape Alava, WA, the fishery will open August 5 with a 5,800 coho subarea quota. The fishery will be open 7 days per week with a two-fish daily bag limit,

and closed 0–3 miles (4.8 km) of shore south of Skagway Rock.

Treaty Indian Fisheries

Ocean salmon management measures proposed by the treaty Indian tribes are part of a comprehensive package of treaty Indian and non-treaty salmon fisheries in the ocean and inside waters that was agreed to by the various parties. Treaty troll seasons, minimum length restrictions, and gear restrictions were developed by the tribes and agreed to by the Council. Treaty Indian troll fisheries north of Cape Falcon are governed by a chinook quota of 11,000 fish and a coho quota which is dependent on the level of Canadian coho harvest off WCVI. If the Canadian harvest is more than 1.3 million coho off WCVI, then the coho quota is set at 12,500 fish; upon agreement of state and tribal managers, the Regional Director will implement an inseason adjustment to the coho quota not to exceed 20,000 fish. At a Canadian harvest level between 1.1 and 1.3 million coho off WCVI, the Regional Director will adjust the coho quota to 25,000. The all-salmon-except-coho seasons will open May 1 and extend through June 30, if the overall harvest guideline of 7,000 chinook is not reached. The all-salmon seasons will open August 1 and extend through the earliest of September 15 or attainment of the chinook or coho quotas. The minimum length restrictions for all treaty ocean fisheries, excluding ceremonial and subsistence harvest, is 24 inches (61.0 cm) for chinook and 16 inches (40.6 cm) for coho.

The 1997 Fisheries

The timing of the March and April Council meetings makes it impracticable for the Council to recommend fishing seasons that begin before May 1 of the same year. Therefore, 1997 fishing season openings earlier than May 1 also are established in this notification. The Council recommended, and NMFS concurs, that the following seasons will open off California in 1997. From Point Lopez to Point Mugu, a commercial fishery for all salmon except coho will open April 15 and continue through the earlier of April 28 or attainment of the 10,000 chinook quota. This fishery is intended to evaluate the relative contribution rates of Central Valley, Klamath, and southern Oregon chinook stocks to catches off southern California. The following recreational seasons have two-fish daily bag limits and a minimum size limit of 24 inches (61.0 cm) for chinook salmon: From Pigeon Point to the U.S.-Mexican border, a recreational fishery for all salmon will open on March 15. From Point Arena to Pigeon Point, a recreational fishery for all salmon will open on March 29. From Horse Mountain to Point Arena, a recreational fishery for all salmon except coho will open on February 15 (the nearest Saturday to February 15). If an evaluation indicates low coho abundance is anticipated in 1997, inseason action may be taken to prohibit retention of coho in the recreational fisheries south of Point Arena.

At its March 1997 meeting, the Council will consider an inseason recommendation to open commercial and recreational seasons for all salmon except coho on April 15, 1997, in areas off Oregon.

The following tables and text are the management measures recommended by the Council for 1996 and, as specified, for 1997.

Table 1. Commercial Management Measures for 1996 Ocean Salmon Fisheries

Note: This table contains important restrictions in parts A, B, and C which must be followed for lawful participation in the fishery.

A. Season Descriptions

North of Cape Falcon

Attention: All non-treaty troll and recreational ocean fisheries north of Cape Falcon are closed in 1996, and will remain closed all season unless the conditions allowing the contingency season to be implemented are met. If Canadian harvest of coho off the west coast of Vancouver Island (WCVI) is determined to be at 1.3 million coho or less, a contingency season described below will be implemented through an inseason adjustment to the regulations. At a harvest level of 1.1 million to 1.3 million coho off the WCVI, the non-treaty ocean total allowable catch (TAC) will be set at 75,000 coho; the troll fishery will be limited by overall catch quotas of zero chinook and 18,800 coho. At a harvest level of less than 1.1 million coho off the WCVI, the non-treaty coho TAC may be increased contingent on: Allocating at least 50 percent of the savings from harvest reductions below 1.2 million coho to spawner escapement of the critical coho stocks; no increase in estimated Oregon coastal natural coho impacts above those modeled under the assumptions of the season structure presented in the contingency season for an assumed WCVI harvest of 1.2 million coho; and agreement among all relevant state and tribal fishery managers. The contingency season, if it is implemented, and any adjustments to the non-treaty coho TAC will be implemented by inseason management.

Season Effective May 1, 1996

U.S.-Canadian Border to Cape Falcon

Closed.

Contingency Season

U.S.-Canadian Border to Leadbetter Point

July 26 through earlier of September 30 or 18,800 coho quota. All salmon except chinook. Season to follow a cycle of 3 days open/4 days closed. The open/closure cycle may be modified inseason as necessary to manage the fishery. Each vessel may possess, land and deliver no more than 75 coho per open period. The landing limit may be modified inseason as necessary to utilize the available quota. Following any closure, vessels must land and deliver fish in the area or adjacent closed area within 24 hours.

South of Cape Falcon

Cape Falcon to Cape Arago

May 1 through June 30, and August 7 through October 31. All salmon except coho. No more than 4 spreads per line.

Cape Arago to Oregon-California Border

May 1 through earlier of June 30 or 5,300 chinook quota. All salmon except coho. Season to follow a cycle of 4 days open/3 days closed. The open/closure cycle may be modified inseason as necessary to manage the fishery. No more than 4 spreads per line. Landing limits may be instituted inseason as necessary to keep the fishery within the quota.

Cape Arago to Humbug Mountain

August 7 through earlier of August 31 or 8,800 chinook quota, and September 1 through earlier of October 31 or 10,000 chinook quota. All salmon except coho. No more than 4 spreads per line.

Sisters Rocks to Mack Arch

August 3 through earlier of August 31 or 3,000 chinook quota. All salmon except coho. Season to follow a cycle of 2 days open/2 days closed. The open/closure cycle may be modified inseason as necessary to manage the fishery. No more than 4 spreads per line. Open only 0 to 4 nautical miles (7.4 km) of shore. All salmon caught in the area must be landed and delivered in Port Orford, Gold Beach, or Brookings within 24 hours of each closure. Landings limits may be instituted inseason as necessary to keep the fishery within the quota. Vessel registration with the Oregon Department of Fish and Wildlife is required by the State prior to August 1 for participants in this fishery in order

to accurately sample the catch to determine the river of origin of salmon landed in this fishery.

Oregon-California Border to Humboldt South Jetty

August 15 thru earlier of August 31 or 2,500 chinook quota, and September 1 thru earlier of September 15 or 6,000 chinook quota. All salmon except coho. Landing limit of 30 fish per day. Chinook minimum size limit (total length) of 27 inches. Klamath Control Zone closed (see C.7.). See line restriction (C.3.).

Horse Mountain to Point Arena

August 1 through September 30. All salmon except coho. Chinook minimum size limit (total length) of 27 inches. See line restriction (C.3.).

Point Arena to Point Reyes

June 1 through June 30, and August 1 through September 15. All salmon except coho. Chinook minimum size limits (total length) of 26 inches through June 30 and 27 inches thereafter. See line restriction (C.3.).

Bodega Head to Point San Pedro

September 16 through September 30. All salmon except coho. Chinook minimum size limit (total length) of 27 inches. See line restriction (C.3.).

Point Reyes to U.S.-Mexican Border

May 1 through June 30, and July 3 through September 15. All salmon except coho. Chinook minimum size limit (total length) of 26 inches through June 30 and 27 inches thereafter. See line restriction (C.3.).

Point Lopez to Point Mugu in 1997

April 15 through earlier of April 28 or 10,000 chinook quota. All salmon except coho. Chinook minimum size limit (total length) of 26 inches. All fish must be landed within the area. See line restriction (C.3.).

B. MINIMUM SIZE LIMITS

[Inches*]

Area (when open)	Chinook		Coho		Pink
	Total length	Head-off	Total length	Head-off	
North of Cape Falcon	.....	.....	16.0	12.0	None.
Cape Falcon to Oregon-California Border	26.0	19.5	.....	.....	None.
South of Oregon-California Border (see part A for applicable chinook size limit).	26.0 or 27.0	19.5 20.25	.....	.....	None.

* Metric equivalents for chinook: 27.0 inches=68.6 cm, 26.0 inches=66.0 cm, 20.25 inches=51.4 cm, 19.5 inches=49.5 cm.
Metric equivalents for coho: 16.0 inches=40.6 cm, 12.0 inches=30.5 cm.

C. Special Requirements, Restrictions, and Exceptions

C.1. *Hooks*—Single point, single shank barbless hooks are required.

C.2. *Spread*—A single leader connected to an individual lure or bait.

C.3. *Line Restriction*—No more than 6 lines per vessel off California.

C.4. *Compliance with Minimum Size or Other Special Restrictions*—All salmon on board a vessel must meet the minimum size or other special requirements for the area being fished and the area in which they are landed if that area is open. Salmon may be landed in an area that is closed only if they meet the minimum size or other special requirements for the area in which they were caught.

C.5. *Transit Through Closed Areas with Salmon on Board*—It is unlawful for a vessel to have troll gear in the water while transiting any area closed to salmon fishing while possessing salmon.

C.6. *Notification When Unsafe Conditions Prevent Compliance with Regulations*—A vessel is exempt from meeting the landing requirements for the contingency season north of Leadbetter Point if it is prevented by unsafe weather conditions or mechanical problems from meeting landing restrictions, and it complies with the State of Washington requirement to notify the U.S. Coast Guard and receives acknowledgement of such notification prior to leaving the area where landing is required. This notification shall include the name of the vessel, port where delivery will be made, approximate amount of salmon (by species) on board and the estimated time of arrival.

C.7. *Klamath Control Zone*—The ocean area at the Klamath River mouth bounded on the north by 41°38′48″ N. lat. (approximately 6 nautical miles north of the Klamath River mouth), on the west by 124°23′00″ W. long. (approximately 12 nautical miles of shore), and on the south by 41°26′48″ N. lat. (approximately 6 nautical miles south of the Klamath River mouth).

C.8. *Inseason Management*—In addition to standard inseason actions or inseason modifications already noted under the season description, the following inseason guidance is provided to NMFS:

Transfers of 5,000 fish or less between subarea quotas north of Cape Falcon shall be done on a fish-for-fish basis;

NMFS may make inseason adjustments to fisheries north and south of Cape Falcon, consistent with and complementary to Council spawner escapement objectives, if management agreements or understandings with Canada warrant such action;

At the March 1997 meeting, the Council will consider an inseason recommendation to open commercial seasons for all salmon except coho on April 15 in areas off Oregon.

C.9. *Incidental Halibut Harvest*—To land Pacific halibut caught incidentally in Area 2A (all waters off the States of Washington, Oregon, and California) while trolling for salmon during troll seasons, a vessel must be issued an incidental halibut harvest license by the International Pacific Halibut Commission (phone 206–634–1838). License applications must be postmarked no later than April 1, 1996. A salmon troller may participate in this fishery or in the directed commercial fishery targeting halibut, but not in both. In troll fisheries (except in July), incidentally caught halibut may be landed under the following restrictions: No more than 1 halibut for each 15 chinook landed, except 1 halibut may be landed without meeting the ratio requirement, and no more than 20 halibut may be landed per trip. Halibut retained must be in compliance with the minimum size limit of 32 inches (81.3 cm). The Oregon Department of Fish and Wildlife will monitor landings. If landings are projected to exceed the 16,068-lb (7.3-mt) preseason allocation or the entire Area 2A total allowable catch of halibut, NMFS will take

inseason action to close the incidental halibut fishery through a document published in the Federal Register.

C.10. Consistent with Council management objectives, the State of Oregon may establish additional late-season, all-salmon-except-coho fisheries in state waters.

C.11. For the purposes of California Department of Fish and Game Code, section 8232.5, the definition of the Klamath management zone for the ocean salmon season shall be that area from Humbug Mountain, OR, to Horse Mountain, CA.

Table 2. Recreational Management Measures for 1996 Ocean Salmon Fisheries

Note: This table contains important restrictions in parts A, B, and C which must be followed for lawful participation in the fishery.

A. Season Descriptions

North of Cape Falcon

Attention: All non-treaty troll and recreational ocean fisheries north of Cape Falcon are closed in 1996, and will remain closed all season unless the conditions allowing the contingency season to be implemented are met. If Canadian harvest of coho off the west coast of Vancouver Island (WCVI) is determined to be at 1.3 million coho or less, a contingency season described below will be implemented through an inseason adjustment to the regulations. At a harvest level of 1.1 million to 1.3 million coho off the WCVI, the non-treaty ocean total allowable catch (TAC) will be set at 75,000 coho; the recreational fishery will be limited by overall catch quotas of zero chinook and 56,200 coho. At a harvest level of less than 1.1 million coho off the WCVI, the non-treaty coho TAC may be increased contingent on: allocating at least 50 percent of the savings from harvest reductions below 1.2 million coho to spawner escapement of the critical coho stocks; no increase in estimated Oregon coastal natural coho impacts above those modeled under the assumptions of the season structure presented in the contingency season for an assumed WCVI harvest of 1.2 million coho; and agreement among all relevant state and tribal fishery managers. The contingency season, if it is implemented, and any adjustments to the non-treaty coho TAC will be implemented by inseason management.

Season Effective May 1, 1996

U.S.-Canadian Border to Cape Falcon

Closed.

Contingency Season

U.S.-Canadian Border to Cape Alava

August 5 through earlier of September 26 or 5,800 coho subarea quota. Open 7 days per week. All salmon except chinook. Two fish per day. Closed 0 to 3 miles (4.8 km) of shore south of Skagway Rock (48°21′58″ N. lat.). Inseason management may be used to maintain season length.

Cape Alava to Queets River

August 5 through earlier of September 26 or 1,500 coho subarea quota. Open 7 days per week. All salmon except chinook. Two fish per day. Closed 0 to 3 miles (4.8 km) of shore. Inseason management may be used to maintain season length.

Queets River to Leadbetter Point

July 22 through earlier of September 26 or 20,800 coho subarea quota. Open Sunday through Thursday only. All salmon except chinook. Two fish per day. No more than 4 fish in 7 consecutive days. Closed 0 to 3 miles (4.8 km) of shore. Inseason management may be used to maintain season length.

Leadbetter Point to Cape Falcon

July 22 through earlier of September 26 or 28,100 coho subarea quota. Open Sunday through Thursday only. All salmon except chinook. Two fish per day. No more than 4 fish in 7 consecutive days. Closed 0 to 3 miles (4.8 km) of shore north of the Columbia Control Zone and in the Columbia Control Zone (see C.5. for revised definition). Inseason management may be used to maintain season length.

South of Cape Falcon

Cape Falcon to Humbug Mountain

May 1 through July 7, and August 16 through September 30. All salmon except coho. Two fish per day. No more than 6 fish in 7 consecutive days. Legal gear limited to: Artificial lures, plugs or bait no less than 6 inches (15.2 cm) long (excluding hooks and swivels) with no more than 2 single point, single shank barbless hooks; flashers and divers prohibited.

Humbug Mountain to Horse Mountain

May 12 through July 7, and August 18 through September 21. All salmon except coho. 1 fish per day. No more than 4 fish in 7 consecutive days. Klamath Control Zone closed (see C.6.). See rod restriction (C.2.).

Horse Mountain to Point Arena

February 17 (nearest Saturday to February 15) through July 7, and August 1 through November 17 (nearest Sunday to November 15). All salmon except coho. Two fish per day. Chinook minimum size limit of 24 inches. See rod and gear restrictions (C.2. and C.3.).

In 1997, the season will open February 15 (nearest Saturday to February 15) through April 30 for all salmon except coho; two fish per day; chinook minimum size limit of 24 inches.

Point Arena to Point San Pedro

March 2 through October 14. All salmon except coho. Two fish per day. Chinook minimum size limit of 24 inches through July 1 and 26 inches thereafter. See rod and gear restrictions (C.2. and C.3.).

In 1997, the season will open March 29 through April 30 for all salmon; two fish per day; chinook minimum size limit of 24 inches. If evaluation indicates low coho abundance in 1997, inseason action may prohibit retention of coho. At the April 1997 meeting, the Council will consider measures for the remainder of the season.

Point San Pedro to Pigeon Point

March 2 through August 25. All salmon except coho. Two fish per day. Chinook minimum size limit of 24 inches through July 1 and 26 inches thereafter. See rod and gear restrictions (C.2. and C.3.).

In 1997, the season will open March 29 through April 30 for all salmon; two fish per day; chinook minimum size limit of 24 inches. If evaluation indicates low coho abundance in 1997, inseason action may prohibit retention of coho. At the April 1997 meeting, the Council will consider measures for the remainder of the season.

Pigeon Point to U.S.-Mexican Border

March 2 through August 25. All salmon except coho. Two fish per day. Chinook minimum size limit of 24 inches through July 1 and 26 inches thereafter. See rod and gear restrictions (C.2. and C.3.).

In 1997, the season will open March 15 through April 30 for all salmon; two fish per day; chinook minimum size limit of 24 inches. If evaluation indicates low coho abundance in 1997, inseason action may prohibit retention of coho. At the April 1997 meeting, the Council will consider measures for the remainder of the season.

B. MINIMUM SIZE LIMITS

[Total length in inches*]

Area (when open)	Chinook	Coho	Pink
North of Cape Falcon	.....	16.0	None.
Cape Falcon to Horse Mountain	20.0	.....	None, except 20.0 off California.
South of Horse Mountain (see part A for applicable chinook size limit)	24.0 or 26.0	.....	20.0.

*Metric equivalents for chinook: 26.0 inches=66.0 cm, 24.0 inches=61.0 cm, 20.0 inches=50.8 cm.
Metric equivalents for coho: 16.0 inches=40.6 cm.
Metric equivalents for pink: 20.0 inches=50.8 cm.

C. Special Requirements, Restrictions, and Exceptions

C.1. *Hooks*—Single point, single shank barbless hooks are required for all fishing gear north of Point Conception, CA (34°27′00″ N. lat.).

C.2. *Restriction on Number of Fishing Rods Off California North of Point Conception*—No person fishing for salmon, and no person fishing from a boat with salmon on board, may use more than one rod and line.

C.3. *Gear Restrictions Between Horse Mountain and Point Conception, California, Beginning July 1, 1996*—When fishing with bait and any combination of weights measuring 1 lb or less, the following restrictions apply: no more than 2 hooks may be used; when using 2 hooks, the terminal (lower) hook must be no less than 5/0 and the upper hook no less than 4/0, the distance between the 2 hooks must not exceed 5 inches (12.7 cm) and both hooks must be permanently tied in place (hard tied); if using a single hook, the hook size cannot be less than 5/0. Hook size restrictions do not apply when artificial lures are used or when bait is attached to an artificial lure. (An artificial lure is a man-made lure designed to attract fish, not including scented or flavored artificial baits.)

C.4. *Compliance with Minimum Size or Other Special Restrictions*—All salmon on board a vessel must meet the minimum size or other special requirements for the area being fished and the area in which they are landed if that area is open. Salmon may be landed in an area that is closed only if they meet the minimum size or other special requirements for the area in which they were caught.

C.5. *Columbia Control Zone*—The ocean area at the Columbia River mouth bounded by a line extending for 6 nautical miles (11.1 km) due west from North Head along 46°18′00″ N. lat. to 124°13′18″ W. long., then southerly to 46°13′24″ N. lat. and 124°11′00″ W. long. (green, Columbia River Entrance Lighted Bell Buoy #1), then southerly to 46°11′06″ N. lat. and 124°11′00″ W. long. (red, Columbia River Approach Lighted Whistle Buoy), then northeast along red buoy line to the tip of the south jetty.

C.6. *Klamath Control Zone*—The ocean area at the Klamath River mouth bounded on the north by 41°38′48″ N. lat. (approximately 6 nautical miles [11.1 km] north of the Klamath River mouth), on the west by 124°23′00″ W. long. (approximately 12 nautical miles [22.2 km] of shore), and on the south by 41°26′48″ N. lat. (approximately 6 nautical miles [11.1 km] south of the Klamath River mouth).

C.7. *Inseason Management*—To meet preseason management objectives such as quotas, harvest guidelines and season duration, certain regulatory modifications may become necessary inseason. Actions could include modifications to bag limits or days open to fishing, and extensions or reductions in areas open to fishing.

For 1996, the Council has requested NMFS to make inseason adjustments to fisheries north and south of Cape Falcon, consistent with and complementary to Council spawner escapement objectives, in the event that management agreements or understandings with Canada warrant such action.

The procedure for inseason transfer of coho among recreational subareas north of Cape Falcon will be as follows:

After conferring with representatives of the affected ports and the Salmon Advisory Subpanel recreational representatives north of Cape Falcon, NMFS may transfer coho inseason among recreational subareas to help meet the recreational season duration objectives (for each subarea). Any transfers between subarea quotas of 5,000 fish or less shall be done on a fish-for-fish basis.

At the March 1997 meeting, the Council will consider an inseason recommendation to open seasons for all salmon except coho on April 15 in areas off Oregon.

C.8. Consistent with Council management objectives, the States of Washington and Oregon may establish limited seasons in State waters; fisheries in Oregon State waters are limited to all salmon except coho.

Table 3. Treaty Indian Management Measures for 1996 Ocean Salmon Fisheries.

Note: This table contains important restrictions in parts A, B, and C which must be followed for lawful participation in the fishery.

A. SEASON DESCRIPTIONS

Tribe and area boundaries	Open seasons	Salmon species	Minimum size limit (inches*)		Special restrictions by area
			Chinook	Coho	
Makah—That portion of the Fishery Management Area (FMA) north of 48°02′15″ N. lat. (Norwegian Memorial) and east of 125°44′00″ W. long.	May 1 through earlier of June 30 or overall 7,000 chinook guideline. No more than 3,500 chinook may be taken prior to June 1.	All except coho.	24	.....	Barbless hooks. No more than 8 fixed lines per boat or no more than 4 hand-held lines per person.

A. SEASON DESCRIPTIONS—Continued

Tribe and area boundaries	Open seasons	Salmon species	Minimum size limit (inches*)		Special restrictions by area
			Chinook	Coho	
	August 1 through earliest of September 15 or chinook or coho quota.	All	24	16	
Quileute—That portion of the FMA between 48°07′36″ N. lat. (Sand Point) and 47°31′42″ N. lat. (Queets River) east of 125°44′00″ W. long.	May 1 through earlier of June 30 or overall 7,000 chinook guideline. No more than 3,500 chinook may be taken prior to June 1.	All except coho.	24	.....	Barbless hooks. No more than 8 fixed lines per boat.
	August 1 through earliest of September 15 or chinook or coho quota.	All	24	16	
Hoh—That portion of the FMA between 47°54′18″ N. lat. (Quillayute River) and 47°21′00″ N. lat. (Quinault River) east of 125°44′00″ W. long.	May 1 through earlier of June 30 or overall 7,000 chinook guideline. No more than 3,500 chinook may be taken prior to June 1.	All except coho.	24	.....	Barbless hooks. No more than 8 fixed lines per boat.
	August 1 through earliest of September 15 or chinook or coho quota.	All	24	16	
Quinault—That portion of the FMA between 47°40′06″ N. lat. (Destruction Island) and 46°53′18″ N. lat. (Point Chehalis) east of 125°44′00″ W. long.	May 1 through earlier of June 30 or overall 7,000 chinook guideline. No more than 3,500 chinook may be taken prior to June 1.	All except coho.	24	.....	Barbless hooks. No more than 8 fixed lines per boat.
	August 1 through earliest of September 15 or chinook or coho quota.	All	24	16	

*Metric equivalents: 24 inches=61.0 cm, 16 inches=40.6 cm.

B. Special Requirements, Restrictions, and Exceptions

B.1. All boundaries may be changed to include such other areas as may hereafter be authorized by a Federal court for that tribe's treaty fishery.

B.2. Applicable lengths, in inches, for dressed, head-off salmon, are 18 inches (45.7 cm) for chinook and 12 inches (30.5 cm) for coho. Minimum size and retention limits for ceremonial and subsistence harvest are as follows:

Makah Tribe—None.

Quileute, Hoh, and Quinault tribes—Not more than 2 chinook longer than 24 inches in total length may be retained per day. Chinook less than 24 inches total length may be retained.

B.3. The areas within a 6-mile (9.7-km) radius of the mouths of the Queets River (47°31′42″ N. lat.) and the Hoh River (47°45′12″ N. lat.) will be closed to commercial fishing. A closure within 2 miles (3.2 km) of the mouth of the Quinault River (47°21′00″ N. lat.) may be enacted by the Quinault Nation and/or the State of Washington and will not adversely affect the Secretary of Commerce's management regime.

C. Quotas

C.1. The overall treaty troll ocean quotas would be as follows under assumed coho harvest levels in the Canadian fishery off the west coast of Vancouver Island (WCVI): At 1.46 million coho, 11,000 chinook and from 12,500 to 20,000 coho, depending on the actual WCVI coho harvest target; and at 1.2 million coho, 11,000 chinook and 25,000 coho. These quotas include troll catches by the Klallam and Makah tribes in Washington State Statistical Area 4B from May 1 through September 30. The all-salmon-except-coho fishery will be limited by an overall harvest guideline of 7,000 chinook (3,500 chinook in May and 3,500 chinook in June). The remainder of the quota will be available for the all-salmon fishery beginning in August. The chinook guidelines for May and June are based on a quota of 20,000 to 25,000 coho and may be modified if the final coho quota is less than 20,000. The coho quota is set in these management measures at 12,500. Upon agreement of state and tribal managers, the Regional Director will implement an inseason adjustment to the coho quota not to exceed 20,000. At a Canadian harvest level between 1.1 and 1.3 million, the Regional Director will adjust the coho quota to 25,000.

Halibut Retention

In accordance with the Northern Pacific Halibut Act, regulations governing the Pacific halibut fishery were published in the Federal Register on March 20, 1996 (61 FR 11337). The regulations, which appear under 50 CFR part 301, state that operators of vessels participating in the salmon troll fishery in Area 2A (all waters off the States of Washington, Oregon, and California), who have obtained the appropriate International Pacific Halibut Commission (IPHC) license, may retain halibut caught incidentally during authorized periods, in conformance with provisions announced with the annual salmon management measures.

As provided by 50 CFR 301.7(c) and 301.24(e), the following measures have been approved. The operator of a vessel that has been issued an incidental halibut harvest license by the IPHC (trollers must have sent license applications to IPHC postmarked no later than April 1) may retain Pacific halibut caught incidentally while trolling for salmon during troll seasons, except in July, in Area 2A. A salmon troller may participate in this fishery or in the directed commercial fishery targeting halibut, but not both. In troll fisheries, incidentally caught halibut may be landed only under the following restrictions: No more than 1 halibut for each 15 chinook landed, except 1 halibut may be landed without meeting the ratio requirement, and no more than

20 halibut may be landed per trip. Any halibut retained must be in compliance with the minimum size limit of 32 inches (81.3 cm). The Oregon Department of Fish and Wildlife will monitor landings. If landings are projected to exceed the 16,068-lb (7.3-mt) preseason commercial troll fishery allocation or the entire Area 2A total allowable catch of halibut, NMFS will take inseason action to close the incidental halibut fishery through a document published in the Federal Register.

Gear Definitions and Restrictions

In addition to gear restrictions shown in Tables 1, 2, and 3 of this preamble, the following gear definitions and restrictions will be in effect:

Troll Fishing Gear

Troll fishing gear for the fishery management area (FMA) is defined as one or more lines that drag hooks behind a moving fishing vessel.

In that portion of the FMA off Oregon and Washington, the line or lines must be affixed to the vessel and must not be intentionally disengaged from the vessel at any time during the fishing operation.

Recreational Fishing Gear

Recreational fishing gear for the FMA is defined as angling tackle consisting of a line with not more than one artificial lure or natural bait attached.

In that portion of the FMA off Oregon and Washington, the line must be attached to a rod and reel held by hand or closely attended; the rod and reel must be held by hand while playing a hooked fish. No person may use more than one rod and line while fishing off Oregon or Washington.

In that portion of the FMA off California, the line must be attached to a rod and reel held by hand or closely attended. Weights directly attached to a line may not exceed 4 lb (1.8 kg). While fishing off California north of Point Conception, no person fishing for salmon, and no person fishing from a boat with salmon on board, may use more than one rod and line.

Fishing includes any activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.

Geographical Landmarks

Wherever the words ''nautical miles of shore'' are used in this rule, the distance is measured from the baseline from which the territorial sea is measured.

Geographical landmarks referenced in this document are at the following locations:

Skagway Rock	48°21′58″ N. lat.
Cape Alava	48°10′00″ N. lat.
Queets River	47°31′42″ N. lat.
Leadbetter Point	46°38′10″ N. lat.
Cape Falcon	45°46′00″ N. lat.
Cape Arago	43°18′20″ N. lat.
Humbug Mountain	42°40′30″ N. lat.
Sisters Rocks	42°35′45″ N. lat.
Mack Arch	42°13′40″ N. lat.
Oregon-California Border.	42°00′00″ N. lat.
Humboldt South Jetty	40°45′53″ N. lat.
Horse Mountain	40°05′00″ N. lat.
Point Arena	38°57′30″ N. lat.
Bodega Head	38°17′58″ N. lat.
Point Reyes	37°59′44″ N. lat.
Point San Pedro	37°35′40″ N. lat.
Pigeon Point	37°11′00″ N. lat.
Point Lopez	36°01′15″ N. lat.
Point Conception	34°27′00″ N. lat.
Point Mugu	34°05′12″ N. lat.

Inseason Notice Procedures

Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, 206–526–6667 or 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts. These broadcasts are announced on Channel 16 VHF–FM and 2182 kHz at frequent intervals. The announcements designate the channel or frequency over which the Notice to Mariners will be immediately broadcast. Inseason actions will also be filed for publication with the Office of the Federal Register as soon as practicable. Since provisions of these management measures may be altered by inseason actions, fishermen should monitor either the telephone hotline or Coast Guard broadcasts for current information for the area in which they are fishing.

Technical Amendment

Amendment 9 to the FMP replaced the long-term spawning escapement goal and interim rebuilding schedule for Klamath River fall chinook contained in the framework FMP with fixed annual spawning escapement and harvest rates. Under this approach, known as harvest rate management, the spawning escapement rate is held constant at 33–34 percent of the potential adults from each brood over a long period of time while the magnitude of harvest and the number of spawners is allowed to vary in proportion to the stock abundance. Variation in spawning escapement is subject to a minimum spawning escapement floor of 35,000 naturally spawning adults. The purpose of shifting to a harvest rate management approach was to allow for natural variation in the spawning escapement and to obtain information on the productivity of the Klamath River Basin to ultimately determine the optimum escapement in order to achieve maximum sustainable yield over the long term.

On October 4, 1993, Solicitor of the Department of the Interior issued an opinion on the fishing rights of the Hoopa Valley and Yurok Indian Tribes on the Klamath and Trinity Rivers. In that opinion, the Solicitor concluded that the tribes have a federally protected right to the fishery resource sufficient to support a moderate standard of living or 50 percent of the total available annual harvest of Klamath-Trinity basin salmon, whichever is less. NMFS issued a final rule recognizing the federally reserved fishing rights of the Yurok and Hoopa Valley Tribes, as acknowledged and quantified by the Solicitor, as applicable law for the purposes of the Magnuson Act.

The STT was concerned that fixed rate escapement for each brood of fish might not be possible under variable recruitment levels and annual 50/50 sharing of the harvest between tribal and non-tribal sectors. Analysis by the Klamath River Technical Advisory Team indicated that under annual 50/50 sharing, the brood rate escapement rate could vary from the targeted 33–34 percent rate by approximately 2 percent for any given brood, but over the long term the brood escapement rate would average 33–34 percent.

Under the procedures contained in 50 CFR 661.22, NMFS is authorized to modify an escapement goal by publishing a notice in the Federal Register under § 661.23 if: ''A comprehensive technical review of the best scientific information available provides conclusive evidence which, in the view of the Salmon Technical Team and the Council, justifies modification of an escapement goal.'' In addition, Amendment 9 states that the escapement rate may be modified upon approval of the STT and the Council to meet optimum yield (OY).

At the April 1996 Council meeting, the STT advised the Council that revising the escapement goal from a 33–34 percent escapement rate calculated on a brood year basis to a 33–34 percent rate calculated over the long term would not constitute a significant change. The Council then recommended to NMFS that the spawning escapement goal be revised to allow the escapement rate to vary from the 33–34 percent in order to achieve the required tribal/non-tribal annual allocation, as long as it averages 33–34 percent over the long term. NMFS has approved this change because it meets the objectives of Amendment 9's long-term escapement rate goal, and it allows achievement of OY by allowing

achievement of both the escapement goal and the 50/50 sharing requirement.

Classification

This notification of annual management measures and technical amendment are exempt from review under E.O. 12866.

Section 661.23 requires NMFS to publish a notice establishing management measures for ocean salmon fisheries each year and, if time allows, invite public comments prior to the effective date. Section 661.23 further states that if, for good cause, a notice must be filed without affording a prior opportunity for public comment, public comments on the notice must be invited and received for a minimum of 15 days after filing the notice with the Office of the Federal Register. Under § 661.23, measures are effective upon filing, unless otherwise specified in the notice.

Because many ocean salmon seasons are scheduled to start May 1, the management measures must be in effect by then. Each year the schedule for establishing the annual management measures begins in February with the compilation and analysis of biological and socio-economic data for the previous year's fishery and salmon stock abundance estimates for the current year. These documents are made available and distributed to the public for review and comment. Two meetings of the Council follow in March and April. These meetings are open to the public and public comment on the salmon management measures is encouraged. In 1996, the Council recommended management measures near the conclusion of its meeting on April 12, which resulted in a short time frame for implementation.

In some areas, the season started on May 1 in 1995, but is not scheduled to start until later in 1996 (or it is scheduled to start with different management restrictions in place). The different restrictions are put in place to respond to the needs of the various stocks in 1996. A delay in implementation of the management measures would allow inappropriate openings in some areas, which would cause adverse impacts not contemplated in the design of the 1996 management measures. Therefore, in light of the limited available time and the adverse effect of delay, NMFS has determined that good cause exists to waive the requirements of 50 CFR 661.23 and 5 U.S.C. 553(b) for prior notice and opportunity for prior public comments on that notice to be published in the Federal Register. For the same reasons, NMFS has determined that good cause exists to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d). The measures are effective May 1, 1996. For this document, NMFS is receiving public comments for 30 days from publication of the document.

The public had opportunity to comment on these management measures during their development. The public participated in the March and April Council, STT, and Salmon Advisory Subpanel meetings, and in public hearings held in Washington, Oregon, and California in early April that generated the management actions recommended by the Council and approved by NMFS. Written public comments were invited by the Council between the March and April Council meetings.

On March 8, 1996, NMFS issued a biological opinion that considered the effects of the FMP on all listed salmon species. The biological opinion concluded that fisheries conducted under the FMP are likely to jeopardize the continued existence of Sacramento River winter chinook and Snake River fall chinook, but provided a RPA to avoid jeopardy. These management measures comply with the RPA as well as the incidental take conditions contained in the biological opinion.

The biological opinion also concluded that fisheries conducted under the FMP are not likely to jeopardize the continued existence of other listed salmon species, specifically Snake River wild sockeye salmon and Snake River wild spring and summer chinook.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Dated: April 30, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 661 is amended as follows:

PART 661—OCEAN SALMON FISHERIES OFF THE COASTS OF WASHINGTON, OREGON, AND CALIFORNIA

1. The authority citation for part 661 continues to read as follows:

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

Appendix to Part 661 [Amended]

2. The appendix to part 661 is amended in the table in IV.A., ''Summary of Specific Management Goals for Stocks in the Salmon Management Unit,'' by revising the entry for Klamath Fall Chinook to read as follows:

Appendix

* * * * *

IV. Escapement Goals

A. * * *

SUMMARY OF SPECIFIC MANAGEMENT GOALS FOR STOCKS IN THE SALMON MANAGEMENT UNIT

System	Spawning [1] escapement goal
	* * * * *
Klamath Fall Chinook.	Between 33 and 34 percent of the potential adult natural spawners, but no fewer than 35,000 naturally spawning adults in any one year.[3] The brood escapement rate will average 33 to 34 percent over the long term. The escapement rate for each brood may vary from the 33 to 34 percent in order to achieve the required tribal/non-tribal annual allocation.
	* * * * *

[1] Represents adult natural spawning escapement goal for viable natural stocks or adult hatchery return goal for stocks managed for artificial production.

* * * * *

[3] The minimum escapement floor of 35,000 naturally spawning adults may be modified only by amendment to the FMP.

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[FR Doc. 96–11136 Filed 4–30–96; 4:40 pm]

BILLING CODE 3510–22–W

Proposed Rules

Federal Register
Vol. 61, No. 88
Monday, May 6, 1996

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

Agricultural Marketing Service

7 CFR Part 958

[FV96–958–1PR]

Onions Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon, and Imported Onions; Modification of Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the ''repacker/prepacker'' size designations for all varieties of onions except white or red varieties by increasing the minimum diameter from 1½ inches to 1¾ inches, and the maximum diameter from 2½ inches to 2¾ inches for onions in this size category. Recent trends in buyer preference reflect an increasing demand for larger size onions in the ''repacker/prepacker'' category. This proposed rule is intended to benefit producers and handlers by increasing their flexibility and efficiency in the packaging of ''repacker/prepacker'' size onions. As provided under section 8e of the Agricultural Marketing Agreement Act of 1937, the proposed change to the minimum size requirement would also apply to all imported onions except white or red varieties.

DATES: Comments must be received by June 5, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2523, South Building, P.O. Box 96456, Washington, D.C. 20090–6456; Fax: (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503)326–2724; FAX: (503)326–7440; or Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523, South Building, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202)690–0464; FAX: (202)720–5698.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement No. 130 and Marketing Order No. 958 (7 CFR Part 958), both as amended, regulating the handling of onions grown in certain designated counties in Idaho and Malheur County, Oregon. The marketing agreement and marketing order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule, which would also affect the minimum size requirements for all varieties of imported onions, except white or red varieties, is also issued pursuant to section 8e of the Act. The provisions of section 8e and the onion import regulations are discussed later in this proposed rule.

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

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposal is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

There are no administrative proceedings which must be exhausted prior to any judicial challenge to the provisions import regulations issued under section 8e of the act.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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

There are currently 34 handlers subject to regulation under the marketing order and approximately 550 onion producers in the regulated production area. In addition, at least 148 importers of onions are subject to import regulations and would be affected by this proposed rule.

Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of handlers and producers of Idaho-Eastern Oregon onions may be classified as small entities. The majority of importers may also be classified as small entities.

Pursuant to authority contained in section 958.51 of the marketing order, the Idaho-Eastern Oregon Onion Committee (Committee), at its November 16, 1995, meeting, unanimously recommended changing the minimum and maximum sizes set forth in section 958.328(a)(3)(ii) of the handling regulation. For this size

category, the Committee recommended increasing the minimum diameter from 1½ inches to 1¾ inches, and the maximum diameter from 2½ inches to 2¾ inches for all onions except white or red varieties produced and handled in the production area. Yellow onions are the major group produced in the regulated production area.

This proposed rule would modify a marketing order size category that is recognized by the onion industry as ''repacker'' or ''prepacker'' size onions. Onions in this size category are generally packed and shipped in 50-pound sacks for later repacking into various consumer packs.

The U.S. Standards for Grades of Onions were recently amended to include a classification for ''repacker/prepacker'' size onions (60 FR 46976, September 8, 1995), effective October 10, 1995. Section 51.2836 of the U.S. Standards defines such onions as those ranging from a minimum diameter of 1¾ inches to a maximum diameter of 3 inches. The U.S. Standards also specify that not more than 5 percent of the onions in a lot may be undersized and that not more than 10 percent may be oversized.

Recent trends in buyer preference reflect an increasing demand for larger size onions in the ''repacker/prepacker'' category. The Committee reports that the current maximum diameter of 2½ inches for this size category is too restrictive and has resulted in a high percentage of onions being packed in a different category due to oversize. This has resulted in fewer ''repacker/prepacker'' size onions being available for market. With an increase in the maximum allowable diameter to 2¾ inches for ''repacker/prepacker'' size onions, the Committee expects the quantity of such onions available for market to increase. The Committee recommended an increase to 2¾ inches rather than 3 inches, the upper limit of the size range specified in the U.S. Standards, because the smaller size is more suitable for this industry and its customers. In addition to the proposed increase in the maximum diameter for onions in this category, the Committee recommended that the minimum diameter be increased from 1½ inches to 1¾ inches to be the same as the recently amended U.S. Standards.

Any costs to handlers and producers attributable to this proposed regulation, if adopted, are expected to be offset by the benefits derived from improved returns. The proposed modification would increase the volume of onions marketed in this size category, and is expected to result in higher returns for producers and handlers.

Section 8e of the Act requires that when certain domestically produced commodities, including onions, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating the same commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in more direct competition with the imported commodity. Imports must then meet the requirements established for the particular area.

Grade, size, quality, and maturity regulations have been issued regularly under both Marketing Order 958 and Marketing Order 959, which regulates the handling of onions grown in South Texas. The current import regulation (7 CFR 980.117) specifies that import requirements for onions are to be based on the seasonal categories of onions grown in both marketing order areas. The import regulations specify that imported onions must meet the requirements of Marketing Order 958 during the June 16 through March 9 period each season and Marketing Order 959 through the remainder of the year. Rulemaking is now in progress that would, if approved, change the beginning date of Marketing Order 958 requirements to June 5 (61 FR 4941; February 9, 1996). Current import regulations also provide that all varieties of imported onions, except for white varieties, must be a minimum of 1½ inches in diameter. This proposal would change the import requirements for the period June 16 through March 9 each marketing year to provide that all varieties of onions except white or red varieties shall be a minimum of 1¾ inches in diameter. While no changes are required in the language of section 980.117, all imported onions other than white or red varieties would be required to meet the minimum size requirement proposed herein.

Based on available information, the Agricultural Marketing Service has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received within the comment period will be considered before a final determination is made on this matter.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

List of Subjects in 7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 958 is proposed to be amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 958 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 958.328 is amended by revising paragraph (a)(3)(ii) to read as follows:

§ 958.328 Handling Regulation.

* * * * *

(a) * * *

(3) * * *

(ii) U.S. No. 1, 1¾ inches minimum to 2¾ maximum diameter; or

* * * * *

Dated: April 30, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–11154 Filed 5–3–96; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 95–084–2]

Permanent Private Quarantine Facilities for Horses

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting; reopening and extension of comment period.

SUMMARY: On February 26, 1996, we published an advance notice of proposed rulemaking requesting public comment on the need for and appropriate standards for the establishment of permanent, private quarantine facilities for horses imported into the United States. To provide additional opportunity for public comment, this notice announces our intention to hold a public meeting, and to reopen and extend the comment period on the advance notice. We are also announcing the availability of a risk assessment related to the establishment of permanent, private quarantine

facilities for horses imported into the United States.

DATES: Consideration will be given only to comments received on or before June 5, 1996. We will also consider comments made at a public meeting to be held in Riverdale, MD, on Friday, May 17, 1996, from 8 a.m. to 4 p.m.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–084–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket 95–095–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room. The public meeting will be held at the USDA Center, 4700 River Road, Riverdale, MD.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Bowling, Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231, (301) 734–6479; or e-mail: Jbowling@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 92 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various communicable diseases. The regulations require that certain animals be quarantined upon arrival in the United States as a condition of importation. There are two types of quarantine facilities for animals being imported into the United States: government operated facilities and privately operated facilities. The regulations contain requirements for the approval of temporary private quarantine facilities for horses; however, the regulations do not provide for the approval of permanent private quarantine facilities for horses.

In an advance notice of proposed rulemaking published in the Federal Register on February 26, 1996 (61 FR 7079, Docket No. 95–084–1), we requested public comment on the need for and appropriate standards for the establishment of permanent private quarantine facilities for horses imported into the United States.

To provide additional opportunity for public comment, we will hold a public meeting on Friday, May 17, 1996. The meeting will be held from 8 a.m. to 4 p.m. at the offices of the Animal and Plant Health Inspection Service (APHIS), 4700 River Road, Riverdale, MD. We are seeking recommendations concerning the need for permanent, private quarantine facilities, locations where such additional facilities may be needed, potential standards for building the facilities, and regulatory oversight. Copies of a risk assessment related to the establishment of permanent, private horse quarantine facilities will be available at the meeting, or may be obtained from Dr. Joyce Bowling (see **FOR FURTHER INFORMATION CONTACT**).

The meeting will be divided into three sessions dealing with the following issues:

1. Equine diseases of concern to the U.S. Department of Agriculture (USDA).

2. Requirements for building USDA owned and operated facilities and the costs involved.

3. The risk assessment.

Each session will start with a short presentation by an APHIS representative. Afterward, members of the public will be provided an opportunity to ask questions and make comments concerning that session. It is anticipated that 90 minutes will be alotted for each session.

A representative of APHIS will preside at the public meeting. The presiding officer may limit the time for each presentation so that everyone is accommodated and all interested persons have an opportunity to participate. Any written statements submitted will be made part of the record. A transcript will be made of the public meeting and will be placed in the rulemaking record and will be available for public inspection.

Any persons wishing to make presentations longer than 5 minutes, or presentations that will require audiovisual equipment, should contact Dr. Bowling in advance of the meeting.

APHIS will consider the comments and recommendations from the meeting in making a decision about whether to propose approval of permanent, private horse quarantine facilities and, if so, the standards to be proposed. Any such proposal would be published in the Federal Register for public comment.

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

Done in Washington, DC, this 1st day of May 1996.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–11212 Filed 5–3–96; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Parts 92, 93, 94, 95, 96, and 98

[Docket No. 94–106–2]

Importation of Animals and Animal Products; Public Hearings

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public hearing.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service is hosting a public hearing on the proposed rule on the importation of animals and animal products that was published in the Federal Register on April 18, 1996. The hearing will provide an additional opportunity for the public to comment on the proposal, which would establish criteria for foreign ''regions'' based on risk class levels. The criteria would be used to establish importation requirements for particular animals and animal products from different regions outside the United States.

DATES: The public hearing will be held in Riverdale, MD, on May 22 and, if there are more registered speakers than can be heard in one day, on May 23, 1996. The hearing will begin at 9 a.m. and is scheduled to end at 5 p.m each day.

ADDRESSES: The public hearing will be held at the USDA Center at Riverside, Conference Center, 4700 River Road, Riverdale, MD.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231, (301) 734–8590.

SUPPLEMENTARY INFORMATION:

Background

A public hearing will be held on the notice of proposed rulemaking on the importation of animals and animal products, published by the Animal and Plant Health Inspection Service (APHIS) in the Federal Register on April 18, 1996 (61 FR 16977–17105, Docket No. 94–106–1). The public hearing will be held in Riverdale, MD, on May 22 and, if there are more registered speakers than can be heard in one day, on May 23, 1996.

A representative of APHIS will preside at the public hearing. Any interested party may appear and be heard in person, or through an attorney or other representative. We are interested in obtaining the views of the public on all aspects of the proposed rule.

Persons who wish to speak at the hearing will be asked to provide their names and affiliations. Parties wishing to make oral presentations may register in advance by either: (1) Calling the Regulatory Analysis and Development voice mail at (301) 734–4346 and leaving a message stating their name, telephone number, and organization, and the approximate time necessary for their presentation; or (2) providing the above information by electronic mail to dkaczmarski@aphis.usda.gov. Parties responding by e-mail may wish to use the electronic response registration form available at the APHIS Regionalization Proposal Web Page. A list of persons registered to speak at the hearing will also be posted to the Web page shortly before the hearing. The Web page URL is http://www.aphis.usda.gov/PPD/region. Registration will also be held at the hearing site on May 22, 1996, between 8 a.m. and 8:45 a.m. Speakers will be scheduled in the order their registration is received. Advance registrations must be transmitted to APHIS no later than 9 a.m., d.s.t., May 20, 1996.

The hearing will begin at 9 a.m. on May 22, 1996. The hearing on the second day, May 23, 1996, will be held only if speakers who have registered for the first day have not yet had a chance to speak. The hearing is scheduled to end at 5 p.m. each day that it is held, but may conclude at any time if all persons desiring to speak have been heard. The hearing officer may limit the time for each presentation so that all interested persons have an opportunity to participate. Attendees who wish to speak but who did not register will be provided time to speak only after all registered speakers have been heard.

We ask that anyone who reads a written statement provide two copies to the presiding officer at the hearing. A transcript will be made of the public hearing and the transcript will be placed in the rulemaking record and will be available for public inspection.

The purpose of the public hearing is to give all interested parties an opportunity to present data, views, and information to the Department concerning this proposed rule. Questions about the content of the proposal may be part of a commenter's oral presentation. However, neither the presiding officer nor any other representative of the Department will respond to the comments at the hearing, except to clarify or explain the proposed rule.

APHIS intends to schedule additional hearings on the proposed rule at various locations around the country over the next several months. We will give notice of these additional hearings in the Federal Register.

Done in Washington, DC, this 1st day of May 1996.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–11238 Filed 5–3–96; 8:45 am]

BILLING CODE 3410–34–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of intent to waive the nonmanufacturer rule for purified terephthalic acid ground (PTAG) and un-ground (PTAU).

SUMMARY: The Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for PTAG and PTAU. The basis for a waiver of the Nonmanufacturer Rule for these products is that there are no small business manufacturers or processors available to supply these products to the Federal Government. The effect of a waiver would be to allow an otherwise qualified Nonmanufacturer to supply other than the product of a domestic small business manufacturer or processor on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this notice is to solicit comments and potential source information from interested parties.

DATES: Comments and sources must be submitted on or before May 29, 1996.

ADDRESSES: David Wm. Loines, Procurement Analyst, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416, Tel:(202) 205–6475.

SUPPLEMENTARY INFORMATION: Public law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set-aside for small businesses or the SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found a 13 CFR 121.906(b) and 121.1106(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any ''class of products'' for which there are no small business manufacturers or processors in the Federal market. To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal Government within the last 24 months. The SBA defines ''class of products'' based on two coding systems. The first is the Office of Management and Budget Standard Industrial Classification Manual. The second is the Product and Service Code established by the Federal Procurement Data System.

The Small Business Administration is currently processing a request for a waiver of the Nonmanufacturer Rule for Purified Terephthalic Acid Ground (PTAG) and Un-Ground (PTAU) (SIC 2869, PSC 6810) and invites the public to comment or provide information on potential small business manufacturers for this product.

In an effort to identify potential small business manufacturers, the SBA has searched the Procurement Automated Source System (PASS) and Thomas Register, and the SBA will publish a notice in the Commerce Business Daily. The public is invited to comment or provide source information to SBA on the proposed waiver of the Nonmanufacturer Rule for this class of products.

Dated: April 29, 1996.

Judith A. Roussel,

Associate Administrator for Government Contracting.

[FR Doc. 96–11240 Filed 5–3–96; 8:45 am]

BILLING CODE 8025–01–P

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13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of intent to waive the nonmanufacturer rule for tabulating paper (computer forms, manifold or continuous).

SUMMARY: The Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Tabulating

Paper. The basis for a waiver of the Nonmanufacturer Rule for these products is that there are no small business manufacturers or processors available to supply these products to the Federal Government. The effect of a waiver would be to allow an otherwise qualified Nonmanufacturer to supply other than the product of a domestic small business manufacturer or processor on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this notice is to solicit comments and potential source information from interested parties.

DATES: Comments and sources must be submitted on or before May 29, 1996.

ADDRESSES: David Wm. Loines, Procurement Analyst, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416, Tel: (202) 205–6475.

SUPPLEMENTARY INFORMATION: Public law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set-aside for small businesses or the SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.906(b) and 121.1106(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any ''class of products'' for which there are no small business manufacturers or processors in the Federal market. To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal Government within the last 24 months. The SBA defines ''class of products'' based on two coding systems. The first is the Office of Management and Budget Standard Industrial Classification Manual. The second is the Product and Service Code established by the Federal Procurement Data System.

The Small Business Administration is currently processing a request for a waiver of the Nonmanufacturer Rule for Tabulating Paper (computer forms, manifold or continuous) (SIC 2761, PSC 7530) and invites the public to comment or provide information on potential small business manufacturers for this product.

In an effort to identify potential small business manufacturers, the SBA has searched the Procurement Automated Source System (PASS) and *Thomas Register,* and the SBA will publish a notice in the Commerce Business Daily. The public is invited to comment or provide source information to SBA on the proposed waiver of the Nonmanufacturer Rule for this class of products.

Dated: April 29, 1996.

Judith A. Roussel,

Associate Administrator for Government Contracting.

[FR Doc. 96–11239 Filed 5–3–96; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–69]

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Pratt & Whitney JT9D series turbofan engines. This proposal would require initial and repetitive eddy current inspections (ECI) of 14th and 15th stage high pressure compressor (HPC) disks for cracks, and removal of cracked disks and replacement with serviceable parts. This proposal is prompted by a report of a 14th stage HPC disk bore found cracked during a shop inspection. The actions specified by the proposed AD are intended to prevent 14th and 15th stage HPC disk rupture, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Comments must be received by July 5, 1996.

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–69, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be submitted to the Rules Docket by using the following Internet address: ''epd-adcomments@mail.hq.faa.gov''. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, Publications Department, Supervisor Technical Publications Distribution, M/S 132–30, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Daniel Kerman, Aerospace Engineers, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7130; fax (617) 238–7199.

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 summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–ANE–69.'' 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, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–69, 12 New

England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) received a report of finding during a shop inspection a cracked 14th stage high pressure compressor (HPC) disk installed on a Pratt & Whitney (PW) Model JT9D–7R4D turbofan engine. The investigation revealed that the 14th and 15th stage disk bores can crack due to a fatigue strength debit associated with large unrecrystallized grain microstructure. This material phenomenon results in an associated debit to the 14th and 15th stage HPC disk low cycle fatigue life. This condition, if not corrected, could result in 14th and 15th stage HPC disk rupture, which could result in an uncontained engine failure and damage to the aircraft.

The FAA has reviewed and approved the technical contents of Non-Destructive Inspection Procedure No. 858 (NDIP–858), dated November 7, 1995, attached to PW Alert Service Bulletin (ASB) No. JT9D–7R4–A72–524, dated December 13, 1995, and ASB No. A6232, Revision 1, dated January 11, 1996. That NDIP describes procedures for eddy current inspections (ECI) of 14th and 15th stage HPC disks for cracks.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require initial and repetitive ECI of 14th and 15th stage HPC disks for cracks, and removal of cracked disks and replacement with serviceable parts. The actions would be required to be accomplished in accordance with the ASB's described previously.

There are approximately 1,100 engines of the affected design in the worldwide fleet. The FAA estimates that 170 engines installed on aircraft of U.S. registry would be affected by this proposed AD. The initial and repetitive ECI would take place during regularly scheduled maintenance, and would therefore require no additional costs to perform the actions required by this proposed AD.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Pratt & Whitney: Docket No. 95–ANE–69.

Applicability: Pratt & Whitney (PW) Model JT9D–7R4 series, –59A, –70A, –7Q, and –7Q3 turbofan engines, with the following 14th and 15th stage high pressure compressor (HPC) disk installed: part numbers (P/N's) 5000814–01, 790014, 789914, 790114, 5000815–01, 5000815–021, 704315, 704315–001, 786215, 786215–001, 704314, 789814, and 790214. These engines are installed on but not limited to Airbus A300 and A310 series, Boeing 747 and 767 series, and McDonnell Douglas DC–10 series aircraft.

Note: This airworthiness directive (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 (f) to request approval from the Federal Aviation Administration (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 14th and 15th stage HPC disk rupture, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Inspect 14th stage HPC disks, P/N 5000814–01, in accordance with Non-Destructive Inspection Procedure No. 858 (NDIP–858), dated November 7, 1995, attached to PW Alert Service Bulletin (ASB) No. JT9D–7R4–A72–524, dated December 13, 1995, as follows:

(1) Perform an initial ECI for cracks as follows:

(i) For disks with 7,000 or more cycles since new (CSN), and 3,000 or more cycles in service (CIS) since last shop visit, on the effective date of this AD, inspect within the next 1,000 CIS after the effective date of this AD, or at the next shop visit, whichever occurs first.

(ii) For disks with 7,000 or more CSN, and less than 3,000 CIS since last shop visit, on the effective date of this AD, inspect within 4,000 CIS since the last shop visit, or at the next shop visit, whichever occurs first.

(iii) For disks with less than 7,000 CSN on the effective date of this AD, inspect at the next shop visit after the effective date of this AD, but before exceeding 4,000 CIS since last shop visit, or 8,000 CSN, whichever occurs later.

(iv) For uninstalled disks on or after the effective date of this AD, inspect prior to installation.

(2) Thereafter, perform ECI for cracks at intervals not to exceed 4,000 CIS since last ECI.

(3) Prior to further flight, remove cracked disks and replace with serviceable parts.

(b) Inspect 14th stage HPC disks, P/N's 790014, 789914, 790114, and 15th stage HPC disks, P/N's 5000815–01, 5000815–021, 704315, 704315–001, 786215, and 786215–001, in accordance with NDIP–858, dated November 7, 1995, attached to PW ASB No. JT9D–7R4–A72–524, dated December 13, 1995, or PW ASB No. A6232, Revision 1, dated January 11, 1996, as applicable, as follows:

(1) Perform an initial ECI for cracks as follows:

(i) For disks with 6,500 or more CSN, and 3,000 or more CIS since last shop visit, on the effective date of this AD, inspect within the next 1,000 CIS after the effective date of this AD, or at the next shop visit, whichever occurs first.

(ii) For disks with 6,500 or more CSN, and less than 3,000 CIS since last shop visit, on the effective date of this AD, inspect within 4,000 CIS since the last shop visit, or at the next shop visit, whichever occurs first.

(iii) For disks with less than 6,500 CSN on the effective date of this AD, inspect at the next shop visit after the effective date of this AD, but before exceeding 4,000 CIS since last shop visit, or 7,500 CSN, whichever occurs later.

(iv) For uninstalled disks on or after the effective date of this AD, inspect prior to installation.

(2) Thereafter, perform ECI for cracks at intervals not to exceed 4,000 CIS since last ECI.

(3) Prior to further flight, remove cracked disks and replace with serviceable parts.

(c) Inspect 14th stage HPC disks, P/N's 704314, 789814, and 790214, in accordance with NDIP–858, dated November 7, 1995, attached to PW ASB No. A6232, Revision 1, dated January 11, 1996, as follows:

(1) Perform an initial ECI for cracks as follows:

(i) For disks with 2,000 or more CSN, and 2,000 or more CIS since last shop visit, on the effective date of this AD, inspect within the next 1,000 CIS after the effective date of this AD, or at the next shop visit, whichever occurs first.

(ii) For disks with 2,000 or more CSN, and less than 2,000 CIS since last shop visit, on the effective date of this AD, inspect within 3,000 CIS since the last shop visit, or at the next shop visit, whichever occurs first.

(iii) For disks with 2,000 or more CSN, and no previous shop visits, inspect within 3,000 CIS after the effective date of this AD, or at the next shop visit, whichever occurs first.

(iv) For disks with less than 2,000 CSN on the effective date of this AD, inspect at the next shop visit after the effective date of this AD, but before exceeding 3,000 CSN.

(v) For uninstalled disks on or after the effective date of this AD, inspect prior to installation.

(2) Thereafter, perform ECI for cracks at intervals not to exceed 3,000 CIS since last ECI.

(3) Prior to further flight, remove cracked disks and replace with serviceable parts.

(d) Within 30 days of inspection, report inspection results on the form labeled ''14th and 15th Stage HPC Disk Inspection Report,'' attached to PW NDIP–858, dated November 7, 1995, attached to PW ASB No. A6232, Revision 1, dated January 11, 1996, and PW ASB No. JT9D–7R4–A72–524, dated December 13, 1995, to the office and fax number listed on that form. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(e) For the purpose of this AD, a shop visit is defined as separation of the ''N'' flange.

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

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

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

Issued in Burlington, Massachusetts, on April 18, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–11171 Filed 5–3–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–ANE–02]

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Pratt & Whitney JT8D–200 series turbofan engines, that currently requires periodic inspection of fan blades for locked rotors and foreign object damage (FOD), unlocking of shrouds if necessary, lubrication of fan blade shrouds, and dimensional restoration of the fan blade leading edge. This action would add a requirement to install improved design fan blades as terminating action for the inspections. This proposal is prompted by the introduction into service of improved design fan blades. The actions specified by the proposed AD are intended to prevent fan blade failure, which can result in damage to the aircraft.

DATES: Comments must be received by July 5, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–02, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7137, fax (617) 238–7199.

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 summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–ANE–02.'' 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, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–02, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On June 5, 1995, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 95–12–19, Amendment 39–9270 (60 FR 31388, June 15, 1995), applicable to certain Pratt & Whitney (PW) JT8D–200 series turbofan engines, to require a periodic inspection of fan blades for locked rotors and foreign object damage (FOD), unlocking of shrouds if necessary, lubrication of the fan blade shrouds, and dimensional restoration of the fan blade leading edge. That action was prompted by the determination that fan blades can fail due to high cycle fatigue (HCF) cracking. This HCF cracking can be

caused by FOD, locked shrouds, which can reduce blade vibratory dampening, and leading edge erosion, which can produce blade flutter. That condition, if not corrected, could result in fan blade failure, which can result in damage to the aircraft.

Since the issuance of that AD, the manufacturer has introduced into service fan blades with an improved design configuration that is more resistant to HCF-induced failures.

The FAA has reviewed and approved the technical contents of PW Alert Service Bulletin (ASB) No. A6241, dated January 25, 1996, that describes procedures for inspection of fan blades for locked rotors and FOD, unlocking of shrouds if necessary, lubrication of fan blade shrouds, and dimensional restoration of the fan blade leading edge. This ASB also provides procedures for modification or replacement of fan blades with an improved design configuration that is more resistant to HCF-induced failures.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 95–12–19 to continue to require the inspection and maintenance requirements of that AD, and to add a requirement to modify or install the improved design fan blades as terminating action for those inspections and maintenance requirements.

The FAA estimates that 1,100 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 19 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The FAA also estimates that the parts modification would cost is $2,720 per engine, which includes a manufacturer's discount of $1,700 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,246,000.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9270 (60 FR 31388, June 15, 1995) and by adding a new airworthiness directive to read as follows:

Pratt & Whitney: Docket No. 96–ANE–02. Supersedes AD 95–12–19, Amendment 39–9270.

Applicability: Pratt & Whitney (PW) Models JT8D–209, –217, –217A, –217C, and –219 turbofan engines that have not incorporated PW Service Bulletin (SB) No. 6193, dated October 31, 1994, or with fan blade, Part Numbers (P/N's) 798821, 798821–001, 808121, 808121–001, 809221, 811821, 851121, 851121–001, 5000021–02,5000021–022, and 5000021–032 installed. These engines are installed on but not limited to McDonnell Douglas MD–80 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 paragraphs (d) and (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 fan blade failure, which can result in damage to the aircraft, accomplish the following:

(a) Inspect fan blades and shrouds, unlock fan blade shrouds, lubricate fan blade shrouds, restore leading edge dimensions, and modify or install improved design fan blades in accordance with the schedule and procedures described in Parts 1, 2, and 3 of the Accomplishment Instructions of PW Alert Service Bulletin (ASB) No. A6241, dated January 25, 1996.

(b) Modification of fan blades to the improved design configuration or installation of improved design fan blades in accordance with Part 3 of the Accomplishment Instructions of PW ASB No. A6241, dated January 25, 1996, constitutes terminating action to the inspections and maintenance actions described in Parts 1 and 2 of that ASB.

(c) For the purpose of this AD, the accomplishment effective date to be used for determination of compliance intervals, as required by Section 2 of PW ASB No. A6241, dated January 25, 1996, is defined as the effective date of this AD.

(d) For the purpose of this AD, ''repair'' as specified in Part 3, Paragraph A.(1)(b) of the Accomplishment Instructions of PW ASB No. A6241, dated January 25, 1996, is defined as the refurbishment of fan blades in accordance with Part 3, Paragraph C of the Accomplishment Instructions of PW ASB No. A6241, dated January 25, 1996.

(e) Alternative methods of compliance that have been approved for AD 95–12–19 are applicable for this AD and additional approval is not required.

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

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

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

Issued in Burlington, Massachusetts, on April 1, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–11168 Filed 5–3–96; 8:45 am]

BILLING CODE 4910–13–U

Coast Guard

33 CFR Part 100

[CGD01–96–015]

RIN 2115–AE46

Special Local Regulation: Swim Buzzards Bay Day, New Bedford, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent special local regulation for a swimming event known as Swim Buzzards Bay Day. The event will be held in Buzzards Bay, Achushnet River, on July 28, 1996, and annually thereafter on a weekend in July that has favorable tidal conditions. This regulation is needed to protect the participants from vessel traffic during the swimming event.

DATES: Comments must be received on or before June 20, 1996.

ADDRESSES: Comments should be mailed to Commander (b), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, MA 02110–3350, or may be hand delivered to Room 428 at the same address, between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) B.M. Algeo, Chief, Boating Affairs Branch, First Coast Guard District, (617) 223–8311.

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 notice (CGD01–96–015), the specific section of the proposal to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8½″×11″ unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons requesting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

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 Commander (b), First Coast Guard District at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it is determined 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.

Discussion of Proposed Amendments

The annual Swim Buzzards Bay Day is a local, traditional event which has been held for the previous two years on the Achushnet River, New Bedford/Fairhaven, MA. In the past, the Coast Guard has promulgated individual regulations for the event. Given the recurring nature of the event, the Coast Guard desires to establish a permanent regulation. The proposed regulation will establish a regulated area in the Acushnet River for the 1996 event and will establish a permanent regulation for following years. This proposal restricts vessels from approaching within 200 feet of participating swimmers.

The event will consist of approximately 50 swimmers transversing the Acushnet River from Fort Phoenix Beach in Fairhaven, MA, to Billy Woods Wharf in New Bedford, MA. There will be one rowing skiff per participant, along with sponsor provided vessels on scene to augment a Coast Guard patrol to alert boating traffic of the presence of the swimmers. The time period for the event is dictated by tidal conditions. Subject to Coast Guard approval, the sponsor selects a weekend in July that most closely exhibits low tide at a daytime hour reasonable for holding the event. Spectator craft are authorized to watch the race from any area as long as they remain 200 feet away from any participating swimmer. In emergency situations, provisions may be made to establish safe escort by a Coast Guard or Coast Guard designated vessel for vessels requiring transit within 200 feet of participating swimmers.

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 been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the limited duration of the event, the extensive advisories that will be made to the affected maritime community, and the minimal restrictions which the regulation places on vessel traffic.

Small Entities

Under the Regulatory Flexibility Act (55 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.

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

Collection of Information

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

Federalism

The Coast Guard has analyzed this 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.

Environment

The Coast Guard has considered the environmental impacts of this proposal and concluded that, under paragraph 2.B.2.e.34(h) of COMDTINST 16475.1B, (as revised by 61 FR 13563, March 27, 1996) this proposal is a special local regulation issued in conjunction with a regatta or marine parade and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

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

Proposed Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

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

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

2. A permanent section, 100.116, is added to read as follows:

§ 100.116 Swim Buzzards Bay Day, New Bedford, MA.

(a) *Regulated area.* All waters of the Acushnet River within 200 feet of participating swimmers.

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

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

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

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

(c) *Effective period.* This section is in effect from 10 a.m. to 12 p.m. on July 28, 1996, and each year thereafter on a date and times published in the Federal Register.

Dated: April 23, 1996.

J.L. Linnon,

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

[FR Doc. 96–11237 Filed 5–3–96; 8:45 am]

BILLING CODE 4910–14–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Ch. II

[Docket No. 96–2]

Eligibility for the Cable Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The Copyright Office of the Library of Congress is opening a rulemaking proceeding to consider the eligibility for the cable compulsory license of open video systems of telephone companies which retransmit broadcast signals. The Office requests interested parties to submit comments as to whether, and what extent, open video systems may make use of the cable compulsory license.

DATES: Comments should be received on or before July 5, 1996. Reply comments are due on or before June 5, 1996.

ADDRESSES: If delivered BY MAIL, fifteen copies of written comments should be addressed to Office of the General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024. If delivered BY HAND, fifteen copies of written comments should be brought to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room LM–407, First and Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, or William Roberts, Senior Attorney for Compulsory Licenses, Telephone (202) 707–8380 or Telefax (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

Section 111 of the Copyright Act, 17 U.S.C., grants a compulsory copyright license to cable television systems for the retransmission of over-the-air broadcast stations to their subscribers. In exchange for the license, cable operators submit royalty payments, along with statements of account detailing their retransmissions, to the Copyright Office on a semi-annual basis, which deposits the royalties with the United States Treasury in interest bearing accounts for later distribution to copyright owners of non-network broadcast programming.

Cable systems determine their royalty payments according to a calculation formula devised by Congress in 1976. 17 U.S.C. 111(d). Payments are made based upon a cable system's gross receipts from subscribers for the retransmission of broadcast signals. The statute subdivides cable systems, based on their gross receipts totals, into three categories: Small, medium and large. Small systems pay a fixed amount without regard to the number of broadcast signals they retransmit, while medium-sized systems pay a royalty within a specified range, with a maximum amount, based on the number of signals they retransmit.

Large cable systems, which pay over ninety percent of royalties submitted by cable systems, calculate their royalties according to the number of distant broadcast signals which they retransmit to their subscribers.[1] These cable systems pay a percentage of their gross receipts for each distant signal they retransmit, and different royalty rates apply to different signals, depending upon the total number of distant signals carried. Determining when a broadcast signal is distant, what rate must be applied to it, and the royalty due for the signal is, for the most part, determined by reference to the rules and regulations of the Federal Communications Commission governing cable systems that were in effect on April 15, 1976. Copyright payments under section 111 of the Copyright Act today are, therefore, dependent upon the manner in which the cable television industry was regulated in 1976.

Section 111(f) defines a ''cable system'' as follows:

> A ''cable system'' is a facility, located in any State, Territory, Trust Territory, or Possession, that in whole or in part receives signals transmitted or programs broadcast by one or more television broadcast stations licensed by the Federal Communications Commission, and makes secondary transmissions of such signals or programs by wires, cables, microwave, or other communications channels to subscribing members of the public who pay for such service. For purposes of determining the royalty fee under subsection (d)(1), two or more cable systems in contiguous communities under common ownership or control or operating from one head-end shall be considered as one system.

17 U.S.C. 111(f).

At the time of passage of the Copyright Act, the only type of retransmission system serving subscribers with broadcast programming was traditional wired cable systems regulated as such by the FCC. Consequently, it was generally well understood in 1976 what was meant by ''cable system'' for purposes of section 111. However, beginning in the early to mid-1980's, retransmission services other than traditional wired cable systems came into existence. Like traditional wired cable systems, these other services were capable of delivering broadcast signals to their subscribers, and they sought eligibility for the section 111 license.

The addition of new retransmission providers significantly altered the

[1] For large cable systems which retransmit only local broadcast signals, there is still a minimum royalty fee which must be paid. This minimum fee is not applied, however, once the cable system carries one or more distant signals.

complexion of the video marketplace as it existed at the time of passage of the Copyright Act. Not only did new faces appear, but the FCC of the late 70's and early 80's took a decidedly deregulatory stance with respect to the industry. The Commission lifted its distant signal and syndicated exclusivity restrictions, *see Malrite T.V. of New York, Inc.* v. *FCC,* 652 F.2d 1140 (2d Cir. 1981), *cert. denied sub. nom., National Football League, Inc.* v. *FCC,* 454 U.S. 1143 (1982), which formed the bedrock of determining section 111 copyright fees, and the Commission's must-carry rules fell to court challenge. *See Quincy Cable T.V., Inc.* v. *FCC,* 768 F.2d 1434 (D.C. Cir. 1985), *cert. denied,* 476 U.S. 1169 (1986) and *Century Communications* v. *FCC,* 835 F.2d 292 (D.C. Cir. 1987), *cert. denied,* 486 U.S. 1032 (1988). Thus, three sets of rules—distant signal carriage, syndicated exclusivity and must-carry—while still applicable by statute to the compulsory license royalty calculation, no longer had a life of their own. The Copyright Office has been attempting to deal with the consequences of these eliminations ever since.

With new retransmission providers seeking to use 17 U.S.C. 111, the Copyright Office opened a rulemaking proceeding to consider the issue. Specifically, the Office considered the eligibility of wireless cable systems (MMDS and MDS), satellite master antenna television systems (SMATVs), and satellite carriers.[2] In a Notice of Proposed Rulemaking, the Office proposed new regulations that would govern the conditions under which SMATVs would qualify for compulsory licensing under section 111, announced a preliminary decision that wireless cable was not eligible, and a policy decision that satellite carriers were not eligible. 56 FR 31580 (July 11, 1991). The Office confirmed that wireless cable and satellite carriers were not eligible in final regulations. 57 FR 3284 (January 29, 1992).[3] The decision, with respect to satellite carriers, has withstood judicial challenge. *See Satellite Broadcasting Communications Association* v. *Oman,* 17 F.3d 344 (11th Cir.), *cert. denied,* 115 S.Ct. 88 (1994).

In late 1994, Congress passed legislation to overturn the Office's final regulations with respect to wireless cable. The Satellite Home Viewer Act of 1994, Pub.L.No. 103–369, amended the section 111(f) definition of a ''cable system'' to specifically include systems which retransmit broadcast programming via microwave. It is now clear that wireless cable systems are eligible for section 111. Satellite carriers, however, still do not qualify, and must use the license found in 17 U.S.C. 119.

Telecommunications Act

The Copyright Office's SMATV, wireless cable and satellite carrier rulemaking proceeding was prompted by a video marketplace in the 80's that differed significantly from that of the 70's. It is readily apparent that the video marketplace of the 90's and the future will be ever more different.

In February 1996, Congress enacted the Telecommunications Act. Pub.L.No. 104–104, 110 Stat. 56 (1996). Among the sweeping reforms and actions of this legislation is recognition and authorization of telephone company entry into the video marketplace. Section 653 of the Communications Act, as amended, now provides that ''[a] local exchange carrier may provide cable service to its cable service subscribers in its telephone service area through an open video system that complies with this section.'' 47 U.S.C. 653(a)(1).

Prior to passage of the Telecommunications Act, the telephone companies had been prohibited from entering the cable television business within their own service areas. The Federal Communications Commission was, however, considering the possibility of authorizing telephone companies to lease channel capacity over its phone lines to third parties who would provide video service to phone company subscribers. *See* First Report & Order in Docket No. 87–266, 56 FR 65464 (December 17, 1991). Known as video dialtone, the FCC issued experimental licenses to a handful of video dialtone operators, several of whom have already begun service to subscribers. These operators provide original and source licensed programming, as well as retransmission of over-the-air broadcast signals.

The Telecommunications Act has terminated the FCC's video dialtone proceeding by expressly allowing telephone entry into cable through ''open video systems.'' *See* section 302(b)(3); Report and Order in Docket No. 96–46, 61 FR 10475 (March 14, 1996)(eliminating video dialtone rulemaking proceeding). Under the Telecommunications Act's authorization, telephone companies can act not only as common carriers providing the pipeline between third party program providers and subscribers, but can offer programming services themselves. This creates a possibility, with respect to broadcast retransmission, of several program providers using the same facility to provide subscribers with broadcast signals.

The structure and appearance of open video systems remains largely unresolved at this time. Private industry is still very much in the planning stage, while the FCC is conducting a rulemaking proceeding to determine the amount and extent of regulation that open video systems will require. *See* Notice of Proposed Rulemaking in Docket No. 96–46, 61 FR 10496 (March 14, 1996). The Telecommunications Act directs the Commission to apply much of its cable regulations to open video systems,[4] but of course the FCC's cable rules in effect in 1976 will have no application to such systems.

While Congress has cleared the path for telephone entry into the broadcast retransmission business for communications law purposes, it has not taken any action to resolve the copyright licensing aspects. Section 653(c)(4) of the Communications Act, as amended, provides that ''[n]othing in this Act precludes a video programming provider making use of an open video system from being treated as an operator of a cable system for purposes of section 111 of title 17, United States Code.'' Some have argued that this provision is a congressional affirmation that open video systems are eligible for section 111 licensing. The plain language of the provision, however, belies that argument. Section 653(c)(4) simply states that nothing in the Telecommunications Act, by itself, shall be construed as preventing open video systems from being considered as a section 111 cable system; it says nothing about whether such systems can be considered cable systems under the terms of section 111 of the Copyright Act. It matters little to the copyright inquiry that an open video system is a cable system under the Telecommunications Act if it is not a cable system under the Copyright Act. Further, there is not any legislative history to the Telecommunications Act that demonstrates congressional intention to amend or otherwise clarify the eligibility of open video systems for section 111 under the Copyright Act.[5]

[2] The proceeding initially considered the eligibility of only SMATVs and wireless cable. 51 FR 36706 (October 15, 1986). The comment period was later reopened to consider satellite carriers. 52 FR 28731 (August 3, 1987).

[3] The Office has yet to issue final regulations for SMATVs, but has made a preliminary finding that they are eligible for 17 U.S.C. 111. See 56 FR 31593 (July 11, 1991).

[4] Examples are the sports exclusivity, network non-duplication, and syndicated exclusivity rules.

[5] Section 653(c)(4) comes from the Senate bill, which stated '' [n]othing in this Act precludes a

Recent Filings

Although telephone entry into the cable business was under consideration at the FCC for some time before enactment of the Telecommunications Act, the Copyright Office has not considered such entry in terms of the cable compulsory license.[6] As noted above, through agency interpretation and legislative amendment, the section 111 license is available to traditional wired cable systems, wireless cable systems, and SMATV systems. The Office now must consider the eligibility of open video systems.

For the second accounting period of 1995, the Copyright Office has received statements of account and royalty filings from three systems identifying themselves as video dialtone operators. Interface Communications Group, Inc. identifies itself as a ''video dialtone system being conducted by U.S. West Communications, Inc. in Omaha, Nebraska.'' California Standard Television Corp. identifies itself as a video dialtone programmer whose ''physical facilities'' are owned by Pacific Bell. And Anchor Pacific Corp. also identifies itself as a video dialtone programmer whose ''physical facilities'' are owned by Pacific Bell.

These three filings represent the first claims of eligibility under 17 U.S.C. 111 by an open video system (formerly known as video dialtone). The Office expects that the number of filings for future accounting periods will increase, particularly in light of the Telecommunications Act. We, therefore, feel that now is an appropriate time to open a rulemaking proceeding to consider the eligibility issue.

Request for Comments

The threshold issue in this rulemaking proceeding is whether open video systems are cable systems within the meaning of 17 U.S.C. 111. The initial filings we have received appear to be from independent program providers leasing access on an open video system created by a telephone company. The Telecommunications Act now allows telephone companies to act as program providers as well. We solicit comment on whether both independent program providers and telephone companies should be eligible for section 111 and, if so, under what circumstances. We also seek comment as to whether a telephone company providing an open video system, and not itself engaged in retransmitting broadcast programming, is eligible for the passive carrier exemption of section 111(a)(3), and under what circumstances.

In addressing the threshold eligibility issue, we request that the commentators direct their responses to a consideration of 17 U.S.C. 111 as a whole, as opposed to solely the section 111(f) definition of a ''cable system.'' In the wireless/SMATV/satellite carrier rulemaking proceeding some commentators focused on the section 111(f) definition, and did not discuss how the rest of section 111 might or might not apply to a particular system. The Office stated in the 1992 final rules that section 111 must be interpreted as a whole in determining whether a particular retransmission provider is eligible for compulsory licensing. *See* 57 FR 3292 (1992) (''[E]ach part of a section should be construed in connection with every other part or section so as to produce a harmonious whole. Thus, it is not proper to confine interpretation to the one section to be construed,'' citing 2A Sutherland, *Stat. Const.* 46.05 (5th ed. 1992)). Consequently, we direct the commentators' attention to the particular applicability of all 17 U.S.C. 111 provisions, particularly the royalty calculation scheme. In particular, we are interested in how the 1976 distant signal carriage and syndicated exclusivity rules might or might not be applicable to open video systems. We are also interested in how an open video system would apply the 1976 must-carry rules, plus ADI, to determine local/distant status, particularly where there is not an established traditional wired cable system operating in the same service area as the open video system. And, we are interested in knowing how the ''contiguous communities'' provision of the section 111(f) cable definition might or might not apply to open video systems.

Aside from the threshold eligibility question, the Office directs the commentators to practical questions arising from the filing of statements of account and payment of royalty fees. Thus, we request commentators favoring 17 U.S.C. 111 eligibility of open video systems to detail what changes, if any, are required in the Copyright Office statement of account forms to accommodate open video system filings. We are especially interested in a detailed analysis of how an open video system would calculate its gross receipts, and what fees and charges would be included. We also seek comment as to whether the statement of account form should require all filers to identify what type of cable system they are (SMATV, wireless, traditional wired, etc.). Finally, we seek comment as to how current Office policies and practices, such as application of the 3.75% rate, non-allocation among subscriber groups, and the grandfathering of broadcast signals would apply.

In directing interested parties' attention to the above-identified issues, we do not wish to limit the scope or focus of the comments in any way. We therefore welcome all comments regarding application of 17 U.S.C. 111 to open video systems.

Dated: May 1, 1996.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 96–11226 Filed 5–3–96; 8:45 am]

BILLING CODE 1410–30–P

video programming provider making use of a common carrier video platform from being treated as an operator of a cable system for purposes of section 111 of title 17, United States Code.''

[6] During the legislative process of the Telecommunications Act, proposals were considered to specifically address telephone company eligibility for 17 U.S.C. 111. Such amendments, however, were not included in the Telecommunications Act.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 162–2–0002b; FRL–5466–2]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, San Joaquin Valley Unified Air Pollution Control District, Santa Barbara County Air Pollution Control District, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from aerospace assembly and component manufacturing operations, motor vehicle and mobile equipment coating operations, crude oil production and separation, and storage of reactive organic compound liquids (ROC).

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this 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 this approval 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 rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. 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 June 5, 1996.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street SW., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 92123–1095.

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Suite #200, Fresno, CA 93721.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, B–23, Goleta, CA 93117.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

FOR FURTHER INFORMATION CONTACT: Helen Liu, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1199.

SUPPLEMENTARY INFORMATION: This document concerns the following rules San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4602—Motor Vehicle and Mobile Equipment Coating Operations, Santa Barbara County Air Pollution Control District (SBCAPCD) Rule 325—Crude Oil Production and Separation, SBCAPCD Rule 326—Storage of Reactive Organic Compound Liquids, and South Coast Air Quality Management District (SCAQMD) Rule 1124—Aerospace Assembly and Component Manufacturing Operations. California Air Resources Board submitted the rules to EPA on the following dates: October 13, 1995, March 29, 1994, March 29, 1994, and February 24, 1995, respectively. For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 18, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 96–11206 Filed 5–3–96; 8:45 am]

BILLING CODE 6560–50–W

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40 CFR Part 52

[OH93–1–7290b; FRL–5467–4]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the Particulate Matter contingency measures State Implementation Plan (SIP) revisions submitted by the State of Ohio on July 17, 1995. This submittal addresses the Federal Clean Air Act requirement to submit contingency measures for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM) for the areas designated as nonattainment for the PM National Ambient Air Quality Standards (NAAQS). Contingency measures are emission reductions which are to be implemented, with no further action, in the event that an area fails to meet air quality standards. In the final rules section of this Federal Register, the EPA is approving this action as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received on or before June 5, 1996.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and EPA's analysis of it are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this Federal Register.

Dated: April 19, 1996.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 96–11201 Filed 5–03–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[UT18–1–6778b; FRL–5500–2]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Emission Statement Regulation, Ozone Nonattainment Area Designation, Definitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of the revision to the Utah State Implementation Plan (SIP) that was submitted by the Governor of Utah on November 12, 1993, for the purpose of implementing an emission statement program for stationary sources within the Salt Lake and Davis Counties (SLDC) ozone nonattainment area. The emission statement inventory regulation, Utah Air

Conservation Regulation (UACR) R307–1–3.5.4., was submitted by the State to satisfy the Clean Air Act (CAA), as amended in 1990, requirements for an emission statement program to be part of the SIP for Utah. EPA's approval will serve to make the emission statement inventory regulation federally enforceable. In addition, EPA is proposing to approve other minor changes involving definitions in UACR R307–1–1. and the ozone nonattainment area designation definition in UACR R307–1–3.3.3.

In the Rules Section of this Federal Register, 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 and anticipates no adverse comments. A detailed rationale for the approval 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 rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. 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.

DATES: Comments on this proposed rule must be received in writing by June 5, 1996.

ADDRESSES: Written comments should be addressed to: Richard R. Long, Director, Air Program (8P2–A), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following office: United States Environmental Protection Agency, Region 8, Air Program, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Program (8P2–A), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, Telephone number: (303) 312–6479.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action which is located in the Rules Section of this Federal Register.

Dated: September 29, 1995.

Jack W. McGraw,

Acting Regional Administrator.

Editorial note: This document was received at the Office of the Federal Register May 1, 1996.

[FR Doc. 96–11199 Filed 5–3–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[CA 140–10–7261b; FRL–5457–1]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Placer County Air Pollution Control District and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP), which concern the control of volatile organic compound (VOC) emissions from the storage and transfer of organic liquids and tank degassing operations.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this Federal Register, the EPA is approving the state's SIP revisions as a direct final rule without prior proposal because the Agency views these as noncontroversial revision amendments and anticipates no adverse comments. A detailed rationale for this approval 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 these rules. 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 June 5, 1996.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation reports of the rules are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

Placer County Air Pollution Control District, 11464 B Avenue, Auburn, CA 95603.

Ventura County Air Pollution Control District, Rule Development Section, 669 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Duane F. James, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1191, email: james.duane@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This document concerns the Placer County Air Pollution Control District's Rule 212, ''Storage of Organic Liquids,'' and Rule 215, ''Transfer of Gasoline into Tank Trucks, Trailers and Railroad Tank Cars at Loading Facilities,'' and the Ventura County Air Pollution Control District's Rule 74.26, ''Crude Oil Storage Tank Degassing Operations,'' and Rule 74.27, ''Gasoline and ROC Liquid Storage Tank Degassing Operations.'' These rules were submitted to EPA on January 24, 1995 (Rules 215, 74.26, and 74.27) and October 13, 1995 (Rule 212), by the California Air Resources Board. For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 11, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 96–11195 Filed 5–03–96; 8:45 am]

BILLING CODE 6560–50–W

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40 CFR Part 52

[IL129–1–7046b; FRL–5464–9]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) proposes to approve a State revision to the Illinois sulfur dioxide State Implementation Plan (SO_2 SIP), submitted on March 14, 1995. This revision revises the SO_2 emission limitations applicable to Madison

County through three Federally enforceable State operating permits.

In the final rules section of this Federal Register, the USEPA is publishing a full approval of the State's SIP revision request as a direct final rule without prior proposal, because USEPA views this action as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to these actions, no further activity is contemplated in relation to this proposed rule.

If USEPA receives timely comments adverse to or critical of the approval, which have not been addressed by the State or USEPA, 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. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received on or before June 5, 1996.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at:

Air and Radiation Division, Air Programs Branch, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mary Onischak, Environmental Engineer, Air Programs Branch, (AR–18J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–5954.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the rules section of this Federal Register.

Dated: April 18, 1996.

David Kee,

Acting Regional Administrator.

[FR Doc. 96–11197 Filed 5–6–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD–FRL–5466–3]

Clean Air Act Interim Approval of Operating Permits Program; State of Rhode Island

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes source-category limited interim approval of the Operating Permit Program submitted by the State Rhode Island. Rhode Island's Operating Permit Program was submitted for the purpose of complying with Federal requirements which mandate that states develop, and submit to EPA, programs for issuing operating permits for all major stationary sources and to certain other sources. In the Final Rules Section of this Federal Register, EPA is promulgating source-category limited interim approval of the Rhode Island Operating Permit Program as a direct final rule without prior proposal because the Agency views this submittal as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before June 5, 1996

ADDRESSES: Comments should be addressed to Ida E. Gagnon, Air Permits, CAP, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203–2211. Copies of the State's submittal and other supporting information relevant to this action are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 1, One Congress Street, 11th floor, Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: Ida E. Gagnon, Air Permits, CAP, U.S. Environmental Protection Agency, Region 1, JFK Federal Building, Boston, MA 02203–2211, (617) 565–3500.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules Section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 19, 1996.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 96–11082 Filed 5–3–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 300

[FRL–5467–5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Bio-Ecology Systems Superfund Site from the National Priorities List and Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 announces its intent to delete the Bio-Ecology Systems (Bio-Ecology) Superfund site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of Texas through the (Texas Natural Resource Conservation Commission) (TNRCC) have determined that all appropriate actions under CERCLA have been implemented and that no further cleanup is appropriate. Moreover, EPA and the State have determined that response activities conducted at the site to date have been protective of public health, welfare, and the environment.

DATES: The EPA will accept comments concerning its proposal for deletion for thirty (30) days after publication of this notice in the Federal Register and a newspaper of record.

ADDRESSES: Comments may be mailed to: Ms. Olivia Rodriguez Balandran, Community Relations Coordinator, U.S. EPA, Region 6 (6SF–P), 1445 Ross Avenue, Dallas, Texas 75202–2733, 1–800–533–3508 or (214) 665–6584.

Information Repositories: Comprehensive information on this site is available through the EPA, Region 6, Public Docket, located at the EPA, Region 6, Library Office and is available for viewing from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays. The Library Office address is: U.S. EPA, Region 6, Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone: (214) 665–6424 or 665–6427.

Background information from the Regional Public Docket is available for viewing at the Bio-Ecology Systems Superfund Site information repositories located at:

Grand Prairie City Hall, 317 College Street, Grand Prairie, Texas 75050

Grand Prairie City Library, 901 Conover, Grand Prairie, Texas 75051

U.S. Environmental Protection Agency, Region 6, Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone: (214) 665–6424 or 665–6427

Texas Natural Resource Conservation Commission, 12118 North IH–35, Building D, Room 190, Austin, Texas 78753, Phone: (512) 239–2920

FOR FURTHER INFORMATION CONTACT: Mr. Ernest R. Franke, Remedial Project Manager (6SF–AT), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone: (214) 665–8521.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. National Priorities List (NPL) Deletion Criteria
III. Deletion Procedures
IV. History and Basis for Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region 6 announces its intent to delete the Bio-Ecology Systems Superfund site, Grand Prairie, Dallas County, Texas, from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), Code of Federal Regulations, Title 40 (40 CFR), Part 300, and requests comments on the proposed deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to Section 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

The EPA will accept comments concerning this proposal for thirty (30) days after publication of this notice in the Federal Register and a newspaper of record.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e)(1), sites may be deleted from or recategorized on the NPL where no further response is appropriate. In making a determination to delete a release site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking remedial measures is not appropriate.

Prior to deciding to delete a site from the NPL, EPA must determine that the remedy, or existing site conditions at sites where no action is required, is protective of public health, welfare, and the environment.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future site conditions warrant such actions. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

III. Deletion Procedures

Upon determination that at least one of the criteria described in § 300.425(e)(1) has been met, EPA may formally begin deletion procedures. The following procedures were used for the intended deletion of this site:

(1) EPA Region 6 has recommended deletion and has prepared the relevant documents.

(2) The State of Texas has concurred with the deletion decision.

(3) Concurrent with this National Notice of Intent to Delete, a local notice will be published in local newspapers and shall be distributed to appropriate federal, state, and local officials, and other interested parties. This local notice announces a thirty (30) day public comment period on the deletion package, which starts two weeks from the date of the notice.

(4) The Region has made all relevant documents available in the Regional Office and local site and State of Texas information repositories.

These procedures have been completed for the Bio-Ecology Systems Superfund site. This Federal Register notice, and a concurrent notice in the local newspaper in the vicinity of the site, announce the initiation of a 30-day public comment period and the availability for review of the Notice of Intent to Delete. The public is asked to comment on EPA's intention to delete the site from the NPL; all critical documents needed to evaluate EPA's decision are included in the information repository and deletion docket.

Upon completion of the 30-day public comment period, EPA Region 6 will evaluate these comments before the final decision to delete. The Region will prepare a Responsiveness Summary, to address concerns raised by the comments received during the public comment period. The Responsiveness Summary will be made available to the public at the information repositories. Members of the public are welcome to contact the EPA Regional Office to obtain a copy of the Responsiveness Summary, when available. If EPA still determines that deletion from the NPL is appropriate after receiving public comments, a Final Notice of Deletion will be published in the Federal Register. However, it is not until a Notice of Deletion is published in the Federal Register that the site would be actually deleted.

IV. History and Basis for Intended Site Deletion

The following summary provides the Agency's rationale for deleting the Bio-Ecology Systems Superfund site from the NPL.

The Bio-Ecology Systems (Bio-Ecology) site is an 11.2 acre site located at 4100 East Jefferson Avenue in Grand Prairie, Dallas County, Texas.(Figure 1) It is approximately 5 miles south of Interstate Highway 30 between Fort Worth and Dallas. Bio-Ecology is a former waste disposal facility which occupied a majority of the 11.2 acre area. Bio-Ecology is bounded in all directions by privately-held property and also on the north, east, and south by Mountain Creek. Mountain Creek Lake and the Trinity River are located approximately ¾ mile southwest and 2½ miles north of Bio-Ecology, respectively. Bio-Ecology is located within the 100-year floodplain of Mountain Creek (Trinity River Basin) and has been extensively flooded on at least two occasions during facility operations (June 1973 & June 1974).

Bio-Ecology was a Class I industrial solid waste management facility,

originally authorized by a permit issued by the Texas Water Quality Board (TWQB) on April 24, 1972. Permitted activities included the following: (1) incineration of combustible liquids, slurries, and sludges (subject to Texas Air Control Board standards for odors and emissions); (2) chemical treatment of acids, caustics, and other waste chemical solutions, including those containing heavy metals; (3) biological oxidation of waste waters resulting from separation of mud-water and oil-water mixtures and from chemical treatment of other wastes; and (4) a modified landfill of solids resulting from the other treatment processes (Figure 2). Bio-Ecology was actively operated from June 1972 through June 1978.

Operations at the site were characterized by frequent litigation filed by the Texas Department of Water Resources (TDWR) and its predecessor agency, the Texas Water Quality Board. Both agencies had attempted to force the company to comply with permit standards and all applicable Federal and State laws and regulations. During the 6-year operation of the facility, Bio-Ecology was cited for a number of major violations including the following: (1) Construction of new facilities (i.e., retaining basins) without proper authorization; (2) discharge of wastewater into Mountain Creek; (3) allowing liquid levels in holding basins to reach the brink without any freeboard; (4) storage of drums, several times beyond the permit maximum (200 drums); and (5) several incidents of oil spills.

On or about June 3–4, 1973, approximately 5 inches of rain fell on the site during a 24-hour period. Approximately 90 percent of the facility was inundated. State inspections of the site observed flooding in several storage basins and wastewater runoff into Mountain Creek. The site was to have been designed to adequately protect against a 24-hour, 25-year rainfall. However, the rainfall during June 3–4, 1973 was of less than a 25-year frequency. Orders were issued by the Texas courts on July 6, 1973, and March 24, 1977, requiring Bio-Ecology to comply with its permit and remedy the above mentioned violations. On June 13, 1978, Bio-Ecology filed for bankruptcy under the provisions of Chapter XI of the Bankruptcy Act.

After payment of all priority creditors, the TDWR was able to recover $28,870 from Bio-Ecology for cleanup activities. In December 1979, a contract was made between TDWR and the Owner/Operator to partially close the site. The contract required the following: (1) all open receiving basins and pits were drained; (2) all containerized wastes were buried on site and covered with a pelletized lime blanket; and (3) sludges in various lagoons and landfills were moved to consolidate them on-site. Due to constraints in funding, a number of metal tanks containing oils, solvents, and paint sludges remained at the site. Approximately $34,000 (including the $28,870 obtained from Bio-Ecology bankruptcy) was expended during the period December 12, 1979, through February 15, 1980, for the partial site cleanup.

Bio-Ecology was proposed for the National Priorities List (NPL) on December 30, 1982, and then promulgated on September 8, 1983, with a Hazard Ranking System (HRS) score of 35.06.

Since Bio-Ecology was proposed for the NPL, it became eligible for funding under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980. In November 1981, an application for a Cooperative Agreement (CA) for a Remedial Investigation (RI) and Feasibility Study (FS) at the site was filed by TDWR. The CA between EPA and the State of Texas was approved on April 12, 1982. An award in the amount of $328,000 was authorized to conduct a State-lead RI/FS. The State of Texas, in turn, awarded a contract to Woodward-Clyde Consultants (WCC) to perform the RI/FS. The RI included a hydrologic analysis, a stratigraphic analysis, a hydrogeologic analysis and a geochemical analysis. The results of these analyses are as follows.

The hydrologic analysis showed the site to be poorly drained and subject to surface run-off, erosion, and flooding. Approximately 75 percent of the site was determined to be within the 100-year floodplain.

The stratigraphic analysis identified four subsurface strata within the upper 60 feet at the site. The uppermost stratum from the surface to about 20 feet in depth consists of modern alluvial deposits from the meander deposition of Mountain Creek on the north, east, and south of the site. These modern alluvial deposits are pervious deposits capable of transmitting water vertically and laterally and are thus subject to infiltration by rainfall and high flood waters of Mountain Creek. Underlying the modern alluvial deposits are older alluvial deposits from flood basin deposition of the Mountain Creek valley. These deposits are primarily high plasticity clays with occasional beds of low plasticity clays. The older flood basin soils contain fissures and cracks caused by cyclic shrinkage and swelling. The older alluvial deposits, therefore, act as a leaky aquitard capable of transmitting fluids vertically. These deposits vary in thickness from 25–40 feet across the site. Below this stratum is about a five-foot layer of remnant quaternary gravel deposits which is the first representative water-bearing aquifer encountered. Beneath the gravel deposits is about a 200-foot thick section of the Eagle Ford shale. This shale is for all practical purposes, impervious, and overlies the Woodbine Aquifer. The Woodbine Aquifer is used as a drinking water supply for the City of Grand Prairie.

The groundwater flow, at the time of investigation, was generally from northwest to southeast across the site in the remnant gravel aquifer. Groundwater encountered was also under an artesian head of about 15 feet (measured from the older alluvial deposits). This aquifer was slightly contaminated in the vicinity of the site and was subject to contamination from wastes at the site migrating through the secondary structure of older alluvial deposits. Groundwater is present in the upper alluvial deposits at water levels below the level of surface water in the adjacent stream channel and nearby pond northwest of the site. These surface waters are recharging the alluvium at the site. A search of drinking-water well records was conducted during the investigation and did not reveal anyone using the shallow aquifer as a drinking water source.

The geochemical analysis showed that surface contamination at the site was primarily restricted to on-site locations and to off-site drainage areas. On-site surface contamination was extensive for metals, cyanide, and organics. Composite samples from the site indicated high concentrations of lead (1,100 ppm), arsenic (210 ppm), and cyanide (1,030 ppm). Analysis also indicated the presence of many organic contaminants including toluene (19 ppm), trichloroethylene (1000 ppm), benzene (1.5 ppm), methylene chloride (.087 ppm), and naphthalene (240 ppm). Off-site contamination did not appear to be severe at the time of the field investigation. Likewise, subsurface contamination appeared to be primarily restricted to waste deposits and their vicinity.

There were estimated to be approximately 40,000 cubic yards (CY) of wastes and highly contaminated soils at the site (Figure 3). The site work for the investigation was completed in January 1983. More detail of the RI may be found in WCC's Site Investigation Report dated April 1983.

The FS began in February 1983. The FS conducted by WCC developed the following objectives based on the results of the RI.

- Remove above ground structures, dispose of contents, and treat the associated northern off-site contaminated soil area;
- Raise the site above the 100 year floodplain;
- Provide adequate site drainage;
- Treat special wastes (PCB's in an on-site tank, buried drums and containers including medical vials and laboratory chemicals, areas of high arsenic concentrations, and areas of cyanide presence); and
- Control of off-site migration of wastes by surface and subsurface migration pathways to surface and subsurface waters and adjacent land areas in order to mitigate future impacts on these target receptors (no significant air migration problems were detected during the RI).

More details of the FS may be found in WCC's Remedial Alternatives Analysis Report dated July 1983.

An Initial Remedial Measure (IRM) was concluded at the Bio-Ecology site in September 1983. The IRM cleanup activities included the following:

1. Remove and dispose of approximately 80,000 gallons of hazardous liquids and sludges. (Organics, PCB's, Heavy Metals)
2. Decontaminate and remove the 15 storage tanks and other surface structures.
3. Remove and dispose of about 35 cubic yards of contaminated soil.
4. Surface cleanup. (Miscellaneous debris, site grading, etc.)

This action was deemed necessary to comply with the National Contingency Plan (NCP), with regard to hazardous substances in drums, barrels, tanks, or other bulk storage containers above ground and contaminated soils at or near the surface which posed a threat to public health or the environment.

The Record of Decision (ROD) was signed by Lee Thomas, Assistant Administrator, Office of Solid Waste and Emergency Response at EPA Headquarters on June 6, 1984. The description of the selected remedy was:

- Raise the elevation of the site above the 100-year flood plain.
- Construct an on-site disposal cell with synthetic liner and a leachate collection system.
- Construct a final cover and liner and leachate collection and removal system in accordance with standards promulgated under 40 CFR Part 264 (Resource Conservation and Recovery Act) and applicable guidance.
- Stabilize the waste and place in on-site cell.
- Construct a fence with warning signs.
- Install a groundwater monitoring system in accordance with standards promulgated under 40 CFR part 264.

The ROD stated that the groundwater monitoring program was to determine the existence of any present groundwater contamination outside the containment area; however, the decision to proceed with the cleanup did not encompass remedial action with respect to any groundwater contamination that might be discovered. If such ground water contamination was found, appropriate remedial response would be evaluated, and a future determination regarding the compliance of the response with Resource Conservation and Recovery Act (RCRA) requirements would be made. If no existing contamination was found, the monitoring program was to ensure the continued effectiveness of the selected containment remedy. The State of Texas was consulted and agreed with the remedy.

A Cooperative Agreement (CA), i.e., a grant, was awarded by EPA to the Texas Department of Water Resources (TDWR), now known as the Texas Natural Resource Conservation Commission (TNRCC), on May 12, 1986, to fund the Remedial Action Construction Contract and Oversight Engineer Contract. The $4,143,790 provided to TDWR through the CA was supplemented by $2,788,000 provided by the Air Force under terms of an Inter-Agency Agreement as part of a settlement with EPA to pay for their contribution of wastes to the site when it was operating. Bids for the construction contract were solicited and Rollins Environmental Services (RES) was awarded the contract on March 16, 1987 as low bidder at a contract cost of $3,789,537. WCC was retained as TDWR's oversight engineer. The Notice to Proceed was issued to RES on April 30, 1987 and the contractor mobilized to the site on May 4, 1987.

Construction work proceeded through the spring and early summer of 1987 with excavation and temporary stockpiling of waste materials as the RCRA cell was being constructed. It was soon discovered that the volume of waste originally estimated in the contract document (54,300 cubic yards) would be exceeded and the RCRA cell needed to be enlarged. This was accomplished through change order at a cost of approximately $294,000. The final volume of soil placed in the cell was 85,332 cubic yards, an increase of approximately 31,000 cubic yards more than originally anticipated. This 57% increase in soil to be excavated, moved, stabilized, and placed in the cell (as well as increased dewatering costs) resulted in the largest change order increase in the project, at a cost of $1,227,000. This increase is documented in change order number 7 and more details about these construction activities can be found in WCC'S August 1988 Final Construction Report (pages 19 & 20). Five other relatively minor change orders were approved for a total final construction contract cost (original, plus seven change orders) of $5,317,852 or an increase of 40% beyond the original contract cost. The RCRA cell was completed and closed in April of 1988 and the prefinal inspection of the substantially completed work was held June 27, 1988.

The final inspection of the completed work was held August 31, 1988, and a Certificate of Completion was issued.

In April 1993 a Close Out Report was prepared in which EPA, in consultation with the State of Texas (TNRCC), determined that all appropriate response actions required to ensure the protectiveness of human health and the environment at the Bio-Ecology Systems Superfund site had been implemented.

Pursuant to 40 CFR 300.510 of the NCP, the State (TNRCC) has assumed all responsibility for Operation and Maintenance (O&M) at this site. The Operational & Functional (O&F) period activities from 1988 to 1993 are documented in Section XI of the April 1993 Close Out Report and Section VI of the Summary of the O&M Sampling Events contained in the Five-Year Review dated November 1994. The findings of both the Close Out Report and the Five-Year Review support the determination that there is not a serious leak of the top or bottom liner systems at Bio-Ecology and that the site is operational and functional. Significant contamination has not been found in the groundwater at the site to date, although there have been a few sporadic findings of individual constituents in various wells at levels of concern that necessitate continued monitoring and evaluation. Continued pumping of leachate from the vault will be required throughout the O&M period until the system is pumped dry, and continued monitoring of the groundwater will also be needed. These activities are required by the O&M plan being implemented by TNRCC.

The Agency for Toxic Substance and Disease Registry (ATSDR) issued a Site Review and Update (SRU) report for the Bio-Ecology Systems Superfund Site on March 3, 1993. The SRU concluded that, ''The waste is inaccessible; it is enclosed in a hazardous waste land fill.

It was concluded that the site is not a public health threat to area residents; the area residents are not within one-half mile of the site.'' No further actions or evaluations were recommended.

Hazardous substances encapsulated in the cell on the site, however, are above health-based levels that do not allow for unlimited use of and unrestricted access to the consolidation cell area. Therefore, EPA conducted a statutory five-year review in November of 1994, and the next scheduled review will be in November 1999, pursuant to OSWER Directive 9355.7–02, ''Structure and Components of Five-Year Reviews.''

Based on the successful encapsulation of hazardous substances in the consolidation cell, the results of O&M monitoring to date, and ATSDR's review, EPA has determined that the remedy is protective and no further response action is necessary. This is consistent with current EPA policy as discussed on page 66601 of the December 24, 1991 Federal Register, 40 CFR Part 300. State-funded O&M and EPA-funded Five-Year Reviews will continue in the future, but site deletion should proceed since applicable deletion criteria have been satisfied.

EPA, with the concurrence of the State of Texas, has determined that all appropriate Fund-financed responses under CERCLA at the Bio-Ecology Systems Superfund Site have been completed, and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of Texas have determined that remedial actions conducted at the site to date have been protective of public health, welfare, and the environment.

Dated: April 9, 1996.

Jane Saginaw,

Regional Administrator.

[FR Doc. 96–11208 Filed 5–3–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–95, RM–8787]

Radio Broadcasting Services; Plattsmouth, NE, and Osceola, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Platte Broadcasting Company, Inc., seeking the substitution of Channel 295C3 for Channel 295A at Plattsmouth, NE, and the modification of Station KOTD-FM's license to specify operation on the higher class channel. To accommodate the allotment at Plattsmouth, the Commission also proposes to substitute Channel 296C2 for Channel 295C2 at Osceola, IA, and the modification of Station KJJC's license to specify operation on the alternate Class C2 channel. Channel 295C3 can be allotted to Plattsmouth in compliance with the Commission's minimum distance separation requirements with a site restriction of 18.4 kilometers (11.4 miles) northeast, at coordinates 41–09–22 NL; 95–47–03 WL, to avoid a short-spacing to Station KTPK, Channel 295C, Topeka, Kansas, and to accommodate petitioner's desired transmitter site. Channel 296C2 can be allotted to Osceola and used at Station KJJC's presently transmitter site, at coordinates 41–01–34 NL; 93–51–43 WL.

DATES: Comments must be filed on or before June 17, 1996, and reply comments on or before July 2, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Hayes, Jr., Esq., 13809 Black Meadow Road, Greenwood Plantation, Spotsylvania, Virginia 22553 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–95, adopted April 8, 1996, and released April 25, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–11130 Filed 5–3–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–94; RM–8790]

Radio Broadcasting Services; Eufaula, Wagoner and Warner, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Tri-Mac Broadcasting seeking the reallotment of Channel 271A from Wagoner to Warner, Oklahoma, and the modification of Station KRQZ-FM's license to specify Warner as its community of license. We also propose the substitution of Channel 273C3 for Channel 272A at Eufaula, Oklahoma, and the modification of Station KCES' license to specify operation on the higher class channel. Channel 271A can be allotted to Warner in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.0 kilometers (1.9 miles) west, at coordinates 35–29–16 NL; 95–20–15 WL, to avoid a short-spacing to the reference coordinates for Station KEOK, Channel 269C3, Tahlequah, OK, and Station KENA-FM, Channel 271C3, Mena, AR. Channel 273C3 can be allotted to Eufaula with a site restriction of 18.2 kilometers (11.3 miles) south, which is the transmitter site specified in Station KCES' pending application (BPH–960319ID). In accordance with Sections 1.420(i) and (g), competing expressions of interest in the use of Channel 271A at Warner or Channel 273C3 at Eufaula will not be accepted.

DATES: Comments must be filed on or before June 17, 1996, and reply comments on or before July 2, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John F. Garziglia, Esq., Pepper & Corazzini, L.L.P., 1776 K Street, NW., Suite 200, Washington, DC 20006 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–94, adopted April 8, 1996, and released April 25, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–11129 Filed 5–3–96; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 96–93, RM–8788]

Radio Broadcasting Services; Oxford, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Angel Broadcasting proposing the allotment of Channel 286A to Oxford, Mississippi, as the community's fourth local FM service. Channel 286A can be allotted to Oxford in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.2 kilometers (6.9 miles) north in order to avoid short-spacing conflicts with the licensed site of Station WBKJ(FM), Channel 286C1, Kosciusko, Mississippi, and with a pending application at Water Valley, Mississippi, for Station WYCG(FM), Channel 288A. The coordinates for Channel 286A at Oxford are 34–28–06 and 89–30–33.

DATES: Comments must be filed on or before June 17, 1996, and reply comments on or before July 2, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dan J. Alpert, 2120 N. 21st Road, Suite 400, Arlington, Virginia 22201 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–93, adopted April 10, 1996, and released April 25, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–11128 Filed 5–3–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 651, 650, and 649

[I.D. 042596C]

New England Fishery Management Council; Public Hearings

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

ACTION: Public hearings; request for comments.

SUMMARY: The New England Fishery Management Council (Council) will hold four public hearings on measures to reduce gear conflicts in the Northeast and Mid-Atlantic regions of the exclusive economic zone. The Council proposes to amend the Northeast Multispecies, Atlantic Sea Scallop, and American Lobster Fishery Management Plans (FMPs) to include a framework adjustment procedure that would allow gear conflict disputes to be resolved through regulatory action. The Council also is soliciting written comments to accommodate people unable to attend a hearing or wishing to provide additional comments.

DATES: Written comments must be received on or before May 30, 1996. The hearings are scheduled as follows:

1. May 21, 1996, 7:30 p.m., Warwick, RI.
2. May 22, 1996, 7 p.m., Riverhead, NY.
3. May 23, 1996, 7:30 p.m., Buzzards Bay, MA.
4. May 28, 1996, 7:30 p.m., Portsmouth, NH.

ADDRESSES: Requests for copies of the proposal and written comments should be sent to Douglas C. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906. When sending written comments, clearly mark the outside of the envelope ''Gear Conflict Amendment Comments.'' The hearings will be held at the following locations:

1. Warwick—Holiday Inn at the Crossings, 801 Greenwich Avenue, Warwick, RI
2. Riverhead—Ramada Inn, Long Island Expressway and Route 25, Riverhead, NY
3. Buzzards Bay—Massachusetts Maritime Academy, 101 Academy Drive, Buzzards Bay, MA
4. Portsmouth—Urban Forestry Center, 45 Elwyn Road, Portsmouth, NH

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, (617) 231–0422.

SUPPLEMENTARY INFORMATION: The Council proposes to amend the FMPs to include a framework procedure that would provide a process for resolving gear conflicts involving several fisheries under the management authority of the Council. If necessary, the Council will modify objectives of the FMPs to make future gear conflict regulations consistent with the FMPs.

The measures listed below and any others now included in the FMPs, along with a public process for development of those measures, would constitute the framework adjustment procedure. The preferred alternative includes the following generic management measures to each FMP: (1) Mandatory monitoring of a radio channel by fishing vessels, (2) fixed gear location reporting and plotting requirements, (3) standards of operation when gear conflicts occur, (4) fixed gear marking and setting practices, (5) gear restrictions for specific areas (including time and area closures), (6) vessel monitoring systems, (7) restrictions on the number of fishing vessels or amount of gear, and (8) special permit conditions.

The intent of the framework procedure is to allow local groups of competing types of fishermen to request management assistance and, through the Council, recommend changes to the boundaries or rules for fishing in specific gear management areas. This procedure would enable the Council to respond quickly to gear conflicts by making simultaneous regulatory adjustments to one or more of the existing plans.

In a ''no action'' alternative, the Council would continue its efforts to facilitate voluntary compromises and agreements on fishing rules. Recent efforts, however, have been unsuccessful.

Additionally, the Council proposes to recommend that this type of framework procedure be considered by the Mid-Atlantic Fishery Management Council, the Atlantic States Marine Fisheries Commission, and other agencies, so that gear conflict can be resolved via regulations, regardless of the management authority for an affected fishery.

These hearings are 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 hearing dates.

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

Dated: April 30, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–11134 Filed 5–3–96; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 88
Monday, May 6, 1996

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV95–955–3]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed Collection: Comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for Vidalia Onions Grown in Georgia, Marketing Order No. 955.

DATES: Comments on this notice must be received by July 5, 1996 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Tom Tichenor, Marketing Order Administration Branch, F & V, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C., 20090–6456, Telephone (202) 720–6862 or FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION:

Title: Vidalia Onions Grown in Georgia, Marketing Order No. 955.

OMB Number: 0581–0160.

Expiration Date of Approval: July 29, 1996.

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

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674), industries enter into marketing order programs. The Secretary of Agriculture is authorized to oversee the order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the Vidalia onion marketing order program, which has been operating since 1990. The order authorizes production and marketing research and development projects, including paid advertising. The research and promotion activities are paid for by assessments levied on handlers of Vidalia onions.

The order, and rules and regulations issued thereunder, authorize the Vidalia Onion Committee (Committee), the agency responsible for local administration of the order, to require handlers and growers to submit certain information. Much of this information is compiled in aggregate and provided to the industry to assist in marketing decisions.

The Committee has developed forms as a means for persons to file required information with the Committee relating to onion supplies, shipments, dispositions, and other information needed to effectively carry out the purpose of the Act and order. Vidalia onions may be shipped beginning mid April and ending in mid July, and these forms are utilized accordingly. A USDA form is used to allow growers to vote on amendments to or continuance of the marketing order. In addition, Vidalia onion growers and grower/handlers who are nominated by their peers to serve as representatives on the Committee must file nomination forms with the Secretary.

The forms covered under this information collection require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the Act as expressed in the order.

The size of the Vidalia onion industry has decreased in recent years. The Committee estimates that there are 195 producers and 109 handlers of Vidalia onions currently operating in the production area. These numbers are lower than those used in the previous (1993) information collection burden and, thus, change the burden for all but one of the forms subject to this information collection. All of the handlers are also producers of Vidalia onions.

The burden for the Vidalia Onion Handler Report is changed in this information collection. Under the order, handlers are responsible for reporting to the Committee acquisitions of onions and for submitting an assessment payment based on the volume of onions shipped. The form is used by each handler to report the volume of onions acquired, handled and shipped by the handler, and the assessment due on the onions shipped. The Committee uses this information to verify the handler's assessment obligation.

The information requested on this form was increased in 1993 to include the names of producers and other handlers who the respondent purchased onions from, sold onions to, or packed onions for, during the monthly reporting period. The revised form also asks for the location and quantity of any onions placed into storage during the reporting period. This additional information is needed for compliance purposes, and will enable the Committee to better determine who is responsible for paying assessments on any particular lot of onions. However the time needed to complete the form was not correspondingly increased. This information collection increases the burden from 5 minutes to 20 minutes to complete the form. The total information collection burden has been adjusted accordingly.

The information collected is used only by authorized employees of the Committee and authorized representatives of the USDA, including AMS, Fruit and Vegetable Division regional and headquarter's staff. Authorized Committee employees and the industry are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .30 hours (18 minutes) per response.

Respondents: Vidalia onion growers and handlers and two public members

in the designated production area in Georgia.

Estimated Number of Respondents: 197 (195 growers/ handlers and 1 public member and 1 alternate public member).

Estimated Number of Responses per Respondent: 2.5.

Estimated Total Annual Burden on Respondents: 496 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the functioning of the Vidalia onion marketing order program; (2) the accuracy of the collection burden estimate and the validity of methodology and assumptions used in estimating the burden of respondents; (3) ways to enhance the quality, utility, and clarity of the information requested; and (4) ways to minimize the burden, including use of automated electronic technologies.

Comments should reference OMB No. 0581–0160 and Vidalia Onion Marketing Order No. 955, and be mailed to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C., 20090–6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours at 14th and Independence Ave. S.W., Washington, D.C., Room 2523 South Building.

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

Dated: April 30, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–11155 Filed 5–3–96; 8:45 am]

BILLING CODE 3410–02–P

Cooperative State Research, Education, and Extension Service

Committee of Nine Meeting Cancellation

Section 869 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127) amends Section 3(c)3 of the Act of March 2, 1887 (Hatch Act of 1887), by repealing the Committee of Nine. This committee represented the directors of State agricultural experiment stations in providing recommendations to the Secretary of Agriculture on cooperative regional research projects and related program policy and procedures. Therefore, as a result of the aforementioned repeal, Cooperative State Research, Education, and Extension Service announces cancellation of the following meeting:

Name: Committee of Nine.

Date and Time:

May 15, 1996, 8:30 a.m.–5:00 p.m.

May 16, 1996, 8:30 a.m.–Noon.

Place: USDA, CSREES, 14th & Independence Avenue, SW, Room 3854 South Building, Washington, D.C. 20250.

Action: This meeting has been cancelled.

Contact person for more information: Dr. George E. Cooper, Executive Secretary, U.S. Department of Agriculture, Cooperative State Research, Education, and Extension Service, 14th & Independence Avenue, SW., Room 3851, South Building, Washington, D.C. 20250, Telephone: 202–720–4088.

Done at Washington, D.C. this 30th day of April 1996.

B. H. Robinson,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 96–11148 Filed 5–3–96; 8:45 am]

BILLING CODE 3410–22–M

Food and Consumer Service

Agency Information Collection Activities: Proposed collection; Comment Request—Food Stamp Program Application for Stores

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Consumer Service's (FCS) intention to request an extension of a previously approved information collection in support of the Food Stamp Program application from retail food stores who wish to participate in the program and for which approval expires on May 31, 1996.

DATES: Comments on this notice must be received by July 5, 1996.

ADDRESSES: Send comments and requests for copies of this information collection to: Suzanne M. Fecteau, Chief, Redemption Management Branch, Benefit Redemption Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

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

FOR FURTHER INFORMATION CONTACT: Suzanne M. Fecteau, (703) 305–2419.

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Program Application For Stores, Form FNS–252 (9–93); Food Stamp Program Application For Stores—Reauthorization, Form FCS–252R (2–95); Food Stamp Program Application For Stores—Supplement, Form FNS–252A (8–94); Food and Nutrition Service Meal Services, Form FNS 252–2 (10–79).

OMB Number: 0584–0008.

Expiration Date of Approval: 3 years from date of approval.

Type of Request: Reinstatement, with change of a previously approved collection for which approval expires on May 31, 1996.

Abstract: The Food and Consumer Service (FCS) of the U.S. Department of Agriculture is the Federal Agency responsible for the Food Stamp Program. The Food Stamp Act of 1977, as amended (7 U.S.C. 2011 *et seq.*), requires that the Agency determine the eligibility of firms and certain food service organizations to accept and redeem food stamp benefits and to monitor them for compliance and continued eligibility.

Part of FCS' responsibility is to accept applications from retail food stores and programs that wish to participate in the Food Stamp Program, review the applications in order to determine whether or not applicants meet eligibility requirements, and make determinations whether to grant or deny authorization to accept and redeem food stamp benefits. FCS is also responsible for requiring updates to application information and reviewing that information to determine whether or not the firms or services continue to meet eligibility requirements.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .29 hours per response.

Respondents: Retail food stores and State or local governments.

Estimated Number of Respondents: 112,023.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden of Respondents: 32,482 hours.

Dated: April 29, 1996.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 96–11149 Filed 5–3–96; 8:45 am]

BILLING CODE 3410–30–P

ASSASSINATION RECORDS REVIEW BOARD

Formal Determinations, Designation of Assassination Records, and Reconsiderations

AGENCY: Assassination Records Review Board.

ACTION: Notice of formal determinations, designation of assassination records, and reconsiderations.

SUMMARY: The Assassination Records Review Board (Review Board) met in a closed meeting on April 16–17, 1996, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (Supp. V 1994) (JFK Act). By issuing this notice, the Review Board complies with the section of the JFK Act that requires the Review Board to publish the results of its decisions on a document-by-document basis in the Federal Register within 14 days of the date of the decision.

FOR FURTHER INFORMATION CONTACT: T. Jeremy Gunn, General Counsel and Associate Director for Research and Analysis, Assassination Records Review Board, Second Floor, Washington, D.C. 20530, (202) 724–0088, fax (202) 724–0457.

SUPPLEMENTARY INFORMATION: This notice complies with the requirements of the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107.9(c)(4)(A) (1992). On April 16–17, 1996, the Review Board made formal determinations on records it reviewed under the JFK Act. These determinations are listed below. The assassination records are identified by the record identification number assigned in the President John F. Kennedy Assassination Records Collection database maintained by the National Archives.

For each document, the number of releases of previously redacted information immediately follows the record identification number, followed in turn by the number of postponements sustained, and, where appropriate, the date the document is scheduled to be released or re-reviewed.

FBI Documents: Open in Full

124–10002–10377; 6; 0; n/a
124–10005–10028; 7; 0; n/a
124–10005–10346; 28; 0; n/a
124–10005–10376; 58; 0; n/a
124–10005–10378; 15; 0; n/a
124–10005–10382; 3; 0; n/a
124–10011–10498; 1; 0; n/a
124–10018–10361; 2; 0; n/a
124–10018–10377; 1; 0; n/a
124–10018–10378; 14; 0; n/a
124–10018–10379; 10; 0; n/a
124–10018–10380; 1; 0; n/a
124–10023–10230; 3; 0; n/a
124–10023–10271; 1; 0; n/a
124–10023–10308; 1; 0; n/a
124–10027–10166; 21; 0; n/a
124–10027–10414; 2; 0; n/a
124–10028–10009; 1; 0; n/a
124–10035–10097; 4; 0; n/a
124–10035–10187; 11; 0; n/a
124–10035–10198; 6; 0; n/a
124–10035–10209; 1; 0; n/a
124–10035–10223; 2; 0; n/a
124–10035–10226; 2; 0; n/a
124–10037–10271; 1; 0; n/a
124–10037–10290; 1; 0; n/a
124–10045–10242; 2; 0; n/a
124–10053–10434; 2; 0; n/a
124–10079–10320; 1; 0; n/a
124–10088–10039; 11; 0; n/a
124–10091–10003; 3; 0; n/a
124–10132–10038; 6; 0; n/a
124–10155–10025; 2; 0; n/a
124–10162–10156; 4; 0; n/a
124–10167–10113; 2; 0; n/a
124–10170–10343; 14; 0; n/a
124–10170–10350; 1; 0; n/a
124–10175–10175; 1; 0; n/a
124–10177–10255; 6; 0; n/a
124–10187–10034; 2; 0; n/a
124–10234–10174; 10; 0; n/a
124–10235–10409; 14; 0; n/a
124–10236–10042; 2; 0; n/a
124–10244–10273; 1; 0; n/a
124–10244–10283; 1; 0; n/a
124–10245–10412; 2; 0; n/a
124–10247–10105; 1; 0; n/a
124–10250–10260; 1; 0; n/a
124–10250–10389; 2; 0; n/a
124–10035–10229; 1; 0; n/a
124–10035–10230; 7; 0; n/a
124–10035–10231; 1; 0; n/a
124–10035–10245; 1; 0; n/a
124–10035–10247; 2; 0; n/a
124–10035–10251; 4; 0; n/a
124–10035–10276; 3; 0; n/a
124–10035–10278; 1; 0; n/a
124–10035–10280; 2; 0; n/a
124–10035–10284; 2; 0; n/a
124–10035–10289; 1; 0; n/a
124–10035–10293; 1; 0; n/a
124–10035–10302; 10; 0; n/a
124–10035–10307; 1; 0; n/a
124–10035–10311; 1; 0; n/a
124–10035–10324; 2; 0; n/a
124–10035–10331; 2; 0; n/a
124–10035–10343; 16; 0; n/a
124–10037–10379; 1; 0; n/a
124–10037–10402; 1; 0; n/a
124–10045–10240; 7; 0; n/a
124–10079–10394; 2; 0; n/a
124–10082–10338; 1; 0; n/a
124–10087–10424; 1; 0; n/a
124–10087–10438; 3; 0; n/a
124–10087–10468; 1; 0; n/a
124–10087–10498; 1; 0; n/a
124–10150–10328; 3; 0; n/a
124–10156–10204; 16; 0; n/a
124–10160–10194; 1; 0; n/a
124–10170–10317; 2; 0; n/a
124–10172–10101; 1; 0; n/a
124–10172–10216; 2; 0; n/a
124–10172–10360; 1; 0; n/a
124–10176–10191; 2; 0; n/a
124–10227–10281; 1; 0; n/a
124–10227–10332; 2; 0; n/a
124–10234–10183; 2; 0; n/a
124–10235–10370; 1; 0; n/a
124–10240–10241; 1; 0; n/a
124–10240–10490; 10; 0; n/a
124–10240–10494; 1; 0; n/a
124–10242–10079; 1; 0; n/a
124–10242–10290; 4; 0; n/a
124–10242–10303; 1; 0; n/a
124–10244–10013; 2; 0; n/a
124–10260–10043; 2; 0; n/a
124–10272–10426; 1; 0; n/a
124–10002–10342; 2; 0; n/a
124–10003–10245; 3; 0; n/a
124–10006–10108; 2; 0; n/a
124–10035–10347; 6; 0; n/a
124–10037–10131; 7; 0; n/a
124–10040–10156; 2; 0; n/a
124–10043–10214; 16; 0; n/a
124–10052–10054; 2; 0; n/a
124–10052–10063; 2; 0; n/a
124–10055–10007; 9; 0; n/a
124–10055–10196; 1; 0; n/a
124–10057–10140; 14; 0; n/a
124–10058–10076; 4; 0; n/a
124–10059–10010; 2; 0; n/a
124–10061–10066; 2; 0; n/a
124–10062–10467; 1; 0; n/a
124–10073–10001; 8; 0; n/a
124–10080–10123; 21; 0; n/a
124–10083–10073; 4; 0; n/a
124–10086–10388; 2; 0; n/a
124–10094–10030; 5; 0; n/a
124–10101–10149; 4; 0; n/a
124–10106–10224; 2; 0; n/a
124–10124–10207; 1; 0; n/a
124–10145–10248; 1; 0; n/a
124–10145–10264; 1; 0; n/a
124–10156–10025; 3; 0; n/a
124–10156–10144; 1; 0; n/a
124–10156–10232; 14; 0; n/a
124–10156–10241; 6; 0; n/a
124–10158–10043; 1; 0; n/a
124–10158–10237; 9; 0; n/a
124–10176–10498; 16; 0; n/a
124–10179–10025; 8; 0; n/a
124–10231–10095; 1; 0; n/a
124–10232–10307; 2; 0; n/a
124–10234–10185; 6; 0; n/a
124–10235–10156; 8; 0; n/a
124–10245–10214; 6; 0; n/a
124–10246–10258; 1; 0; n/a

124–10246–10266; 3; 0; n/a
124–10247–10367; 14; 0; n/a
124–10247–10422; 1; 0; n/a
124–10248–10386; 8; 0; n/a
124–10249–10213; 6; 0; n/a
124–10249–10236; 2; 0; n/a
124–10250–10113; 2; 0; n/a
124–10260–10030; 2; 0; n/a
124–10260–10033; 2; 0; n/a
124–10086–10201; 2; 0; n/a
124–10106–10278; 3; 0; n/a
124–10158–10320; 2; 0; n/a
124–10163–10130; 3; 0; n/a
124–10172–10021; 1; 0; n/a
124–10172–10038; 2; 0; n/a
124–10173–10015; 2; 0; n/a
124–10231–10000; 1; 0; n/a
124–10246–10257; 1; 0; n/a
124–10247–10123; 2; 0; n/a
124–10249–10197; 2; 0; n/a
124–10256–10386; 1; 0; n/a

CIA Documents: Open in Full

104–10002–10132; 8; 0; n/a
104–10007–10034; 9; 0; n/a
104–10009–10020; 3; 0; n/a
104–10010–10066; 10; 0; n/a
104–10010–10207; 1; 0; n/a
104–10010–10412; 1; 0; n/a
104–10010–10413; 10; 0; n/a
104–10013–10162; 14; 0; n/a
104–10013–10164; 13; 0; n/a
104–10013–10214; 12; 0; n/a
104–10013–10231; 6; 0; n/a
104–10013–10304; 11; 0; n/a
104–10013–10312; 23; 0; n/a
104–10021–10048; 15; 0; n/a

HSCA Documents: Open in Full

180–10086–10437; 1; 0; n/a
180–10086–10438; 1; 0; n/a

CIA Documents: Postponed in Part

104–10003–10161; 6; 1; 05/1996
104–10004–10063; 8; 10; 05/1996
104–10004–10103; 8; 6; 03/2006
104–10004–10146; 2; 5; 05/1997
104–10004–10214; 2; 3; 10/2017
104–10004–10256; 6; 2; 10/2017
104–10005–10014; 11; 3; 05/1997
104–10005–10016; 10; 1; 05/1997
104–10005–10206; 13; 1; 10/2017
104–10005–10232; 3; 5; 05/1997
104–10006–10015; 1; 2; 10/2017
104–10019–10022; 9; 6; 05/1996
104–10019–10023; 17; 6; 05/1996
104–10020–10003; 17; 3; 04/2006
104–10020–10019; 5; 1; 04/2006
104–10020–10050; 4; 3; 04/2006
104–10021–10004; 28; 11; 05/1996
104–10021–10031; 14; 8; 12/1996
104–10021–10107; 1; 2; 05/1996

Additional Releases: After consultation with appropriate Federal Agencies, the Review Board announces that the following Federal Bureau of Investigation records are now being opened in full: 124–10001–10473; 124–10005–10444; 124–10027–10206; 124–10027–10481; 124–10045–10314; 124–10055–10104; 124–10058–10005; 124–10058–10006; 124–10058–10255; 124–10058–10424; 124–10062–10325; 124–10063–10128; 124–10063–10147; 124–10063–10187; 124–10063–10256; 124–10063–10267; 124–10063–10440; 124–10063–10442; 124–10063–10463; 124–10063–10464; 124–10065–10091; 124–10065–10099; 124–10065–10106; 124–10065–10130; 124–10065–10215; 124–10065–10248; 124–10067–10193; 124–10068–10202; 124–10068–10362; 124–10068–10374; 124–10068–10376; 124–10068–10414; 124–10069–10444; 124–10069–10454; 124–10069–10461; 124–10071–10288; 124–10073–10326; 124–10073–10457; 124–10074–10227; 124–10074–10230; 124–10074–10231; 124–10074–10297; 124–10075–10093; 124–10075–10103; 124–10075–10157; 124–10075–10227; 124–10075–10293; 124–10077–10192; 124–10078–10486; 124–10087–10006; 124–10087–10007; 124–10087–10385; 124–10099–10277; 124–10099–10279; 124–10099–10282; 124–10126–10039; 124–10126–10040; 124–10156–10433; 124–10159–10425; 124–10163–10403; 124–10169–10040; 124–10174–10092; 124–10175–10040; 124–10179–10392; 124–10182–10053; 124–10227–10122; 124–10234–10336; 124–10240–10288; 124–10244–10427; 124–10246–10084; 124–10248–10126; 124–10248–10151; 124–10249–10435; 124–10249–10444; 124–10263–10065; 124–10263–10073; 124–10270–10136; 124–10270–10167; 124–10270–10277; 124–10270–10359; 124–10273–10400; 124–10273–10403; 124–10273–10407; 124–10273–10438; 124–10273–10448; 124–10273–10455; 124–10275–10069; 124–10275–10150; 124–10275–10163.

After consultation with appropriate state and Federal agencies, the Review Board announces that the following House Select Committee on Assassination records are being opened in full: 180–10065–10361; 180–10066–10441; 180–10070–10266; 180–10071–10155; 180–10075–10043; 180–10075–10273; 180–10076–10482; 180–10077–10414; 180–10078–10320; 180–10078–10412; 180–10081–10340; 180–10081–10341; 180–10081–10342; 180–10085–10159; 180–10086–10269; 180–10089–10028; 180–10091–10170; 180–10092–10468; 180–10093–10015; 180–10094–10289; 180–10094–10309; 180–10095–10073; 180–10096–10047; 180–10096–10173; 180–10101–10090; 180–10102–10452; 180–10105–10054; 180–10110–10073; 180–10110–10094; 180–10147–10268.

Designation of Assassination Records: The following United States Secret Service records from the files of Chief James Rowley are designated ''assassination records:'' Twelve news conference transcripts for the November 21, 1963–November 26, 1963 period; Secret Service comments on William Manchester book manuscript; 6 newsclips, and 80 USSS documents from the following file groups: Protective Research/Investigative; Protective Methods; and General. Also included are 374 public suggestions from the Presidential Protection file and the President-General file. All materials are from the 1963-1964 period. On April 17, 1996, by unanimous vote, the Assassination Records Review Board designated the above listed materials as ''assassination records'' pursuant to Sections 7(i)(2)(A) and 9(c)(1)(A) of the President John F. Kennedy Assassination Records Collection Act (''the JFK Act'') and § 1400.1 and § 1400.8 of the Guidance for Interpretation and Implementation of the JFK Act. 36 C.F.R. § 1400 (1995). In not designating some USSS Documents, letters from the public, and some material from the Protective Research/Investigative, Protective Methods, and General files as ''assassination records,'' the Review Board relied upon the advice of its staff, which conducted a thorough review of additional materials in each of the above listed categories.

Notice of Reconsideration: On April 16–17, 1996, the CIA provided additional evidence to the Review Board regarding 8 records that previously had been the subject of Review Board determinations. Upon receiving and evaluating this additional evidence, the Review Board voted to sustain postponements as follows:

FROM ORIGINAL FEDERAL REGISTER NOTICE: 96–8526, 61 FR 15760

Record No.	Number of original releases	Number of original postponements	Number of revised releases	Number of revised postponements	Date of release or re-review
104–10001–10015	3	2	2	3	05/1997
104–10003–10064	3	1	3	3	05/1997

FROM ORIGINAL FEDERAL REGISTER NOTICE: 96–8526, 61 FR 15760—Continued

Record No.	Number of original releases	Number of original postpone-ments	Number of revised releases	Number of revised postpone-ments	Date of release or re-review
104–10003–10100	6	1	4	3	05/1997
104–10004–10124	4	6	2	8	03/2006
104–10005–10059	1	0	0	1	05/1997
104–10005–10169	4	0	2	2	05/1997
104–10005–10182	4	0	2	2	05/1997
104–10021–10093	1	0	0	1	05/1997

Additional Information: The Review Board, at its March 18–19, 1996 meeting, voted to open in full three assassination records from the HSCA files that the National Archives and Records Administration had referred to the Secret Service. At its April 16–17 meeting, the Review Board voted to suspend the opening of these records for 60 days, in order to allow the Secret Service further time to provide evidence in support of certain postponements that the Secret Service wishes to retain under Section 6(3) of the JFK Act. The records affected are: 180–10065–10379; 180–10087–10302; 180–10103–10465.

May 1, 1996.

David G. Marwell,

Executive Director.

[FR Doc. 96–11177 Filed 5–03–96; 8:45 am]

BILLING CODE 6118–01–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

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

Agency: Bureau of the Census.

Title: Questionnaire Pretesting Research.

Form Number(s): Various.

Agency Approval Number: 0607–0725.

Type of Request: Revision of a currently approved collection.

Burden: 12,000 hours.

Number of Respondents: 12,000.

Avg Hours Per Response: 1 hour.

Needs and Uses: In 1991, the Census Bureau obtained a generic clearance on an experimental basis, which relaxed some of the time constraints and enabled the Census Bureau to begin conducting extended cognitive and questionnaire design research as part of testing for its censuses and surveys. The clearance covered data collections in the demographic, economic, and decennial areas of the Census Bureau, and specifically applied to research that is focused on questionnaire design and procedures aimed at reducing measurement errors in surveys. Types of research include field testing, respondent debriefings, split sample experiments, cognitive interviews, and focus groups.The clearance has been in place since that time and the Census Bureau is now seeking a revision of the clearance. We are requesting an increase of 7,500 burden hours annually to conduct quick tests in the decennial area to test new ideas and refine or improve upon positive or unclear results from other tests.

Affected Public: Individuals or households, Businesses or other for–profit, Farms.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: April 29, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–11115 Filed 5–3–96; 8:45 am]

BILLING CODE 3510–07–F

Submission for OMB Review; Comment Request

The Department of Commerce has submitted the following information collection requirement to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13.

Agency: Bureau of Export Administration (BXA).

Title: Competitive Enhancement and Defense Needs Assessment.

Agency Number: None.

OMB Control Number: 0694–0083.

Type of Request: Reinstatement of a previously approved collection.

Burden: 1,995 hours.

Number of Respondents: 3,900.

Avg. Hours Per Response: 30 minutes.

Needs and Uses: To encourage defense diversification as well as increase the competitiveness of small- and medium-size firms nationwide, the Bureau of Export Administration will conduct a Needs Assessment Survey. The purpose of this program is to provide information on existing federal and state government resources available to assist firms in achieving their growth and development objectives. The information collected will be used to match appropriate government programs with the needs of firms that seek to diversify their operations.

Affected Public: Businesses or other for-profit institutions.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Victoria Wassmer, (202) 395–7340.

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

Written comments and recommendations for the proposed information collection should be sent to Victoria Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: April 29, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–11116 Filed 5–3–96; 8:45 am]

BILLING CODE 3510–DT–P

Foreign-Trade Zones Board

[Docket 34–96]

Proposed Foreign-Trade Zone—Montgomery, AL; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Montgomery Area Chamber of Commerce Inc. (a non-profit organization), requesting authority to establish a general-purpose foreign-trade zone in Montgomery, Alabama, adjacent to the Birmingham Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on April 24, 1996. The applicant is authorized to make the proposal under Act No. 498, House Bill 1158, Bound Acts of Alabama, 1977.

The proposed zone would be the third general-purpose zone in the Birmingham Customs port of entry area. The existing zones are: FTZ 98 in Birmingham (Grantee: City of Birmingham; Board Order 247, 49 FR 19367, 5/7/84); and, FTZ 211 in Anniston (Grantee: City of Anniston; Board Order 788 (61 FR 5375, 2/12/96).

The proposed zone would consists of 2 sites (5,725 acres) in Montgomery: *Site 1* (5,170 acres, Airport Site)—located on Interstate 65 on the south side of Montgomery; and, *Site 2* (555 acres)—Gunter Industrial Park, adjacent to the northern Bypass, Montgomery. Site 1 is comprised of the City's Dannelly Field Municipal Airport (1,968 acres), the adjacent Interstate Enterprise Zone industrial development area (3,024 acres) owned by ALFA, the Industrial Development Board of the City of Montgomery and the privately-owned adjoining Catoma Industrial Park (178 acres). The Chamber will be responsible for the marketing and development of the zone project.

The application contains evidence of the need for zone services in the Montgomery area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as electronic equipment, corrugated boxes, telephone equipment and plastic products. Specific manufacturing approvals are not being sought at this time. Request would be made to the Board on a case-by-case basis.

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

As part of the investigation, the Commerce examiner will hold a public hearing on May 30, 1996, 1:00 p.m., Montgomery Area Chamber of Commerce, 41 Commerce Street, Montgomery, Alabama.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 5, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 22, 1996).

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

Montgomery Area Chamber of Commerce 41 Commerce Street Montgomery, Alabama 36104

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

Dated: April 25, 1996.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 96–11120 Filed 5–3–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–428–602]

Brass Sheet and Strip from Germany; Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent To Revoke Order in Part

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

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Revoke Order in Part.

SUMMARY: In response to a request by the respondent, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on brass sheet and strip from Germany. The review covers one manufacturer/exporter of this merchandise to the United States, Wieland-Werke AG (Wieland). The period covered is March 1, 1994 through February 28, 1995. As a result of the review, the Department has preliminarily determined that no dumping margins exist for this respondent. We intend to revoke the order with respect to brass sheet and strip from Germany manufactured by Wieland, based on our preliminary determination that Wieland has had a three-year period of no or *de minimis* sales at less than foreign market value.

We invite interested parties to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: May 6, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2704 or 482–0649, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On March 6, 1987, the Department published in the Federal Register (52 FR 6997) the antidumping duty order on brass sheet and strip from Germany. The Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order for the 1994–1995 period on March 7, 1995 (60 FR 12540). On March 31, 1995, we received a request for review from Wieland covering the period March 1, 1994 through February 28, 1995. We published a notice of initiation of this antidumping duty administrative review on April 14, 1995 (60 FR 19017).

As explained in the memoranda from the Assistant Secretary for Import Administration dated November 22, 1995, and January 11, 1996, all

deadlines were extended to take into account the partial shutdowns of the Federal Government from November 15 through November 21, 1995 and December 15, 1995, through January 6, 1996. Therefore, the deadline for these preliminary results is no later than April 29, 1996, and the deadline for the final results of review is no later than August 27, 1996.

The Department is now conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are sales or entries of brass sheet and strip, other than leaded and tinned brass sheet and strip. The chemical composition of the products under review is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C20000 series. This review does not cover products for which the chemical compositions are defined by other C.D.A. or U.N.S. series. The merchandise is currently classified under Harmonized Tariff Schedule (HTS) item numbers 7409.21.00 and 7409.29.20. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review period is March 1, 1994 through February 28, 1995. The review involves one manufacturer/ exporter, Wieland.

Verification

As provided in section 782(i) of the Tariff Act, we verified information provided by the respondent, Wieland, by using our standard verification procedures, including the examination of relevant sales and financial records and selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification report.

Intent To Revoke

Wieland submitted a request, in accordance with 19 C.F.R. 353.25(b), to revoke the order covering brass sheet and strip from Germany with respect to Wieland's sales of this merchandise.

In accordance with 19 C.F.R. 353.25(a)(2)(iii), this request was accompanied by certifications from the firm that it had not sold the relevant class or kind of merchandise at less than normal value (NV) for a three-year period including this review period, and would not do so in the future. Wieland also agreed to its immediate reinstatement in the relevant antidumping duty order, as long as any firm is subject to this order, if the Department concludes under 19 C.F.R. 353.22(f) that, subsequent to revocation, it sold the subject merchandise at less than NV.

In the two prior reviews of this order, we determined that Wieland did not sell brass sheet and strip from Germany at less than foreign market value. The Department conducted a verification of Wieland's response for this period of review. In this review, we preliminarily determine that Wieland has not sold brass sheet and strip from Germany at less than NV in the United States. Therefore, we intend to revoke the order with respect to Wieland's sales of this merchandise, if these preliminary findings are affirmed in our final results.

United States Price (USP)

In calculating USP for Wieland, we used export price (EP), as defined in section 772 of the Act, because the merchandise was sold to unaffiliated U.S. purchasers prior to the date of importation and because no other circumstances indicated that constructed export price was appropriate. We calculated EP based on prices that were delivered to the customers' premises. In accordance with section 772(c)(1) of the Act, we adjusted USP, less early payment discounts, for brokerage and handling, foreign and U.S. inland freight, and customs duty. We did not adjust for packing expense, which was included in reported U.S. prices.

No other adjustments to EP were claimed or allowed.

Normal Value

A. Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Wieland's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because Wieland's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV for Wieland.

B. Model-Matching

We calculated NV using prices of sales of brass sheet having the same characteristics as to form, coat, gauge, width, and alloy. We used the same gauge and width groupings and the same model-match methodology in this review as in the last completed administrative reviews (1990–1994).

C. Price-to-Price Comparisons

We calculated NV using monthly weighted-average prices of brass sheet and strip having the same characteristics as to form, coat, gauge, width, and alloy. We based NV on the price at which the foreign like product is first sold for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade, and at the same level of trade as the export price, as defined by section 773(a)(1)(B)(i) of the Act.

We reduced NV for early payment discounts and credit, in accordance with section 773(a)(6)(C)(iii), due to differences in circumstances of sale. We reduced NV for movement expenses, in accordance with section 773(a)(6)(B)(ii), and for packing costs incurred in the home market, in accordance with section 773(a)(6)(B)(i). We increased NV for export packing costs, in accordance with section 773(a)(6)(A), and for U.S. credit expenses, in accordance with section 773(a)(6)(C)(iii) of the Act. We added to NV adjustments for physical differences in the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act.

No other adjustments to NV were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of EP to NV, we preliminarily determine that a zero dumping margin exists for Wieland for the period 3/1/94–2/28/95.

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication of this notice. Any hearing will be held 44 days after the date of publication or the first workday thereafter. Interested parties may submit case briefs within 30 days of the publication date of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such case briefs or at a hearing.

The following deposit requirements will be effective for all shipments of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Wieland will be the rate established in the final results of this

review. (2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period. (3) If the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise. (4) If neither the manufacturer nor the exporter is a firm covered in this or any previous review, the cash deposit rate will be 8.87 percent, the ''all others'' rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR § 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: April 26, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–11122 Filed 5–3–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–812]

Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On September 11, 1995, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on dynamic random access memory semiconductors (DRAMS) of one megabit or above from the Republic of Korea. The review covers two manufacturers/exporters of the subject merchandise to the United States for the period October 29, 1992 through April 30, 1994. These manufacturers/exporters are LG Semicon Co., Ltd. (LGS, formerly Goldstar Electron Co., Ltd.) and Hyundai Electronics Industries, Inc. (HEI/Hyundai).

As a result of comments we received, the antidumping margins have changed from those we presented in our preliminary results.

EFFECTIVE DATE: May 6, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas F. Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–3814.

SUPPLEMENTARY INFORMATION:

Background

On September 11, 1995, the Department published the preliminary results (60 FR 47149) of administrative review of the antidumping duty order on DRAMS of one megabit or above from the Republic of Korea. We received timely comments from the petitioner and both respondents. At the request of the petitioner, we held a hearing on October 26, 1995.

Scope of the Review

Imports covered by the review are shipments of DRAMS of one megabit and above from the Republic of Korea (Korea). For purposes of this review, DRAMS are all one megabit and above, whether assembled or unassembled. Assembled DRAMS include all package types. Unassembled DRAMS include processed wafers, uncut die and cut die. Processed wafers produced in Korea, but packaged, or assembled into memory modules in a third country, are included in the scope; wafers produced in a third country and assembled or packaged in Korea are not included in the scope of this review.

The scope of this review includes memory modules. A memory module is a collection of DRAMS, the sole function of which is memory. Modules include single in-line processing modules (SIPs), single in-line memory modules (SIMMs), or other collections of DRAMS, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules which contain additional items which alter the function of the module to something other than memory, such as video graphics adapter (VGA) boards and cards, are not included in the scope.

The scope of this review also includes video random access memory semiconductors (VRAMS), as well as any future packaging and assembling of DRAMS.

The scope of this review also includes removable memory modules placed on motherboards, with or without a central processing unit (CPU), unless the importer of motherboards certifies with the Customs Service that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of this review does not include DRAMS or memory modules that are reimported for repair or replacement.

The DRAMS subject to this review are classifiable under subheadings 8542.11.0001, 8542.11.0024, 8542.11.0026, and 8542.11.0034 of the Harmonized Tariff Schedule of the United States (HTSUS). Also included in the scope are those removable Korean DRAMS contained on or within products classifiable under subheadings 8471.91.0000 and 8473.30.4000 of the HTSUS. Although the HTSUS subheadings are provides for convenience and customs purposes, the written description of the scope of this review remains dispositive.

The period of review (POR) covers from October 29, 1992 through April 30, 1994 for all respondents.

Applicable Statute and Regulations

The Department has conducted this administrative review in accordance with section 751 of the Tariff Action 1930, as amended (the Tariff Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations refer to the provisions as they existed on December 31, 1994.

United States Price

We calculated U.S. price according to the methodology described in our preliminary results, except for the adjustment of value-added taxes (VAT), as described below.

In light of the Federal Circuit's decision in *Federal Mogul* v. *United States*, 63 F. 3d 1572 (Fed. Cir. 1995), the Department has changed its treatment of home market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith*

v. *United States*, 988 F. 2d 1573, 1582 (1993), and which was suggested by that court in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal Mogul* v. *United States*, 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a ''zero'' pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude Commerce from using the ''*Zenith* footnote 4'' methodology to calculate tax-neutral dumping assessments (*i.e.*, assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct Commerce to determine which tax methodology it will employ.

The Department has determined that the ''*Zenith* footnote 4'' methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the *Federal Circuit* has recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the GATT. Secondly, the Uruguay Round Agreements Act (URAA) explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the ''*Zenith* footnote 4'' methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to U.S. price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its longstanding policy of tax-neutrality and with the GATT.

Foreign Market Value

With the exception noted above for VAT, we calculated FMV according to the methodology described in our preliminary results.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results of this administrative review. At the request of the petitioner, we held a public hearing on October 26, 1995. We received timely comments from the petitioner and both respondents.

General Comments

Comment 1: The petitioner argues that Hyundai and LGS erred in preparing their antidumping questionnaire responses by misallocating corporate indirect selling expenses. Specifically, the petitioner argues that Hyundai's U.S. subsidiary, Hyundai Electronics America, Inc. (HEA), and LGS each mistakenly allocated corporate U.S. indirect selling expenses among their various manufacturing divisions on bases other than relative sales value. The petitioner maintains that allocation on the basis of relative sales value is the standard allocation methodology for all indirect selling expenses. The petitioner argues that HEA and LGS's allocation method is incorrect because both respondents under-allocated the proper amount of administrative expenses to their respective semiconductor divisions.

Hyundai argues that the Department's questionnaire did not instruct Hyundai to allocate indirect selling expenses on the basis of sales value, and that the Department routinely accepts allocation bases other than relative sales value, provided that the methodology is reasonable. Hyundai also notes that the Department verified HEA's allocation methodology during its U.S. sales verification of HEA.

LGS argues that the current allocation methodology for indirect selling expenses has been twice verified and accepted by the Department. Moreover, LGS argues that it has been the Department's policy to accept reasonable, verified allocation methodologies of indirect selling expenses.

DOC Position: We agree with Hyundai and LGS. It is not our policy to require allocation of indirect selling expenses based upon relative sales value in every instance (*see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al., Final Results of Antidumping Duty Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 60 FR 10900 (February 28, 1995) (*AFBs 1995*). More specifically, in the final results of the less-than-fair-value investigation we clearly noted that we would accept an allocation basis other than relative sales value provided the methodology was reasonable. *See Dynamic Random Access Memory Semiconductors of One Megabit and Above, from the Republic of Korea*, 58 FR 15467, 15477 (March 23, 1993) (*DRAMS LTFV Final 1993*).

Moreover, we note that Hyundai and LGS used three separate bases of allocation for different selling expenses, one of which was relative sales value. In addition, Hyundai used manpower hours in allocating labor expenses and the number of invoices in allocating accounting department expenses. LGS used a similar methodology to allocate its indirect selling expenses that were not identified by subdivision. We believe that it is more appropriate to allocate human resource and accounting department expenses on the basis of manpower and number of invoices than on the basis of sales value because human resource expense is a function of the number of employees, and accounting department expense is a function of the volume of invoices prepared. Thus, we believe that these allocation bases are reasonable and have continued to accept them for purposes of these final results of review. Furthermore, we verified HEA and LGS's allocation bases for its indirect selling expenses during our U.S. sales verifications and found no discrepancies or inaccuracies in Hyundai or LGS's allocation methodology. *See* Verification Report of Home Market Sales Questionnaire Response of Hyundai Electronic Industries, Inc., April 27, 1995 (HEI Home Market Sales Verification Report) at page pp. 12–13, and Verification Report of Home Market Sales Questionnaire Response of LG Semicon, Ltd., April 13, 1995 (LGS Home Market Verification Report) at page 13.

Comment 2: LGS maintains that the Department should not include research and development expenses (R&D) of non-DRAM products in the DRAM R&D. LGS alleges that the product-specific R&D expenses, which were specifically identified in its accounting system, were fully quantified and verified by Department officials. LGS argues that the Department's decision to include

non-DRAM R&D is inconsistent with the decision of the U.S. Court of International Trade regarding the LTFV investigation which remanded the final determination back to the Department, and, in part, ordered the Department to calculate R&D expense on a product-specific basis. *See Micron Technology, Inc.* v. *Unites States*, 893 F. Supp. 21 (CIT 1995) (*Micron Technology*).

The petitioner argues that a product specific accounting categorization of projects does not prove that R&D conducted for one type of semiconductor cannot benefit the development of another type of semiconductor (i.e., cross-fertilization). Therefore, the petitioner maintains that the Department's treatment of R&D expenses in the preliminary determination was appropriate.

DOC Position: We agree with the petitioner. At verification, we confirmed that each R&D project is accounted for separately in each of the respondent's respective books and records. Separate accounting, however, does not necessarily mean that cross fertilization of scientific ideas does not occur. Moreover, the CIT specifically stated in *Micron Technology* that the Department did not ''direct the court to any record evidence of R&D cross-fertilization in the semiconductor industry.'' *Micron Technology*, 893 F. Supp., at 27. In this review, the Department has provided such information. *See* Memorandum from Karen Park to Holly Kuga regarding Cross Fertilization of R&D for DRAMS, August 14, 1995 (cross fertilization memo). The cross fertilization memo includes pages from verification exhibits, a memorandum from a non-partisan expert from the semiconductor industry, as well as information from certain articles widely read by experts in the DRAM R&D field demonstrating the existence of cross-fertilization of R&D in the DRAM industry.

Comment 3: The petitioner argues that the fees paid by HEI and LGS for the services of their respective trading companies were understated in their questionnaire response (QR). The petitioner maintains that the fees reported by HEI did not reflect the true cost of the services provided by HEI's trading company. The petitioner urges the Department to quantify the real cost of the services provided by HEI's trading company by resorting to best information available (BIA), using the petitioner's estimate of the trading company's costs as derived from the public information of another respondent in this review.

Hyundai argues that the Department should reject the petitioner's assertion because the trading company in question is unrelated to HEI and the Department verified the fee reported. Hyundai states that the fees reported fully reflect the services provided by the trading company to HEI.

The petitioner alleges that despite the number of services provided by LGS' trading company, LGS acknowledged no costs associated with these services. The petitioner argues that a circumstance of sale adjustment should be made to U.S. price to capture the selling expenses associated with this trading company.

LGS argues that the Department has verified that LGS does not incur any additional expenses through the use of the trading company's name as the exporter of record for some of LGS' exports of subject merchandise to the United States. LGS maintains that its trading company did not provide any service for LGS in its sales transactions.

DOC Position: We agree with the respondents. We agree that the trading companies in question are unrelated to HEI and LGS. We verified this during our home market sales verification in Korea. See HEI Cost-of-Production/Constructed Value (COP/CV) Verification Report at page 5, LGS COP/CV Verification Report at page 6. Furthermore, we examined the fees paid to HEI's unrelated trading company by HEI and found no discrepancies in the fee amounts reported. (HEI Home Market Sales Verification Report, p. 16). Despite the petitioner's assertion that these fees do not reflect the actual cost of services provided to HEI, there is no evidence on the record to suggest that this is the case.

We also examined LGS's relationship with its trading company. See LGS Home Market Sales Verification Report, pp. 18–19. We verified that LGS did not incur any costs for the use of its trading company's name. Moreover, we verified that this trading company did not provide any services related to sales of subject merchandise to LGS.

Comment 4: The petitioner urges the Department to impute costs for loan fees borne by certain companies. The petitioner maintains that the fees reported by Hyundai and LGS do not include the risk and cost by certain firms. The petitioner urges the Department to increase HEI and LGS's financing costs by a percentage derived from HEI and LGS's financial statements.

Hyundai counters that the petitioner's argument is without merit because the Department thoroughly verified all financing fees incurred by HEI during the POR. Hyundai further explains that the petitioner ignored the evidence on the record that because Hyundai's fixed assets are used as loan collateral, that the full risk and cost of the loans were accurately reported.

LGS argues that no payment was made related to the loan guarantees. Moreover, LGS notes that the Korean law does not require the guarantor to charge for related party guarantees unless there is a default.

DOC Position: We agree with Hyundai and LGS. During our COP verification of HEI and LGS, we examined HEI's and LGS's financial expenses and specifically addressed the issue of loan fees. *See* Report on the Verification of the Cost of Production Questionnaire Response of Hyundai Electronic Industries, Inc., April 17, 1995 (HEI COP/CV Verification Report) at pp. 26–27 and Verification of the Cost of Production Questionnaire Response of Goldstar Electron Company, Ltd. (GSEN), July 26, 1996, (LGS COP/CV Verification Report), at page 9. Because our COP verification indicates that HEI and LGS accurately reported all loan fees, there is no reason to impute a cost for such expenses.

Company-Specific Comments

LGS

Comment 5: The petitioner alleges that certain royalty agreements require a different percentage payment of royalty expenses depending on whether the covered merchandise is sold in the U.S. or elsewhere. Therefore, the royalty agreements constitute a difference in circumstance of sale, directly related to sales. LGS claims that the petitioner's allegation is factually incorrect. The royalty agreements in question require the same payment for merchandise sold in the U.S. or elsewhere. Moreover, LGS claims that it is the Department's standard practice to treat royalties as a cost of manufacturing.

DOC Position: The royalty agreements in question do not require a different percentage payment depending on whether the covered merchandise is sold in the U.S. or elsewhere. *See* LGS's October 19, 1994 response to the Department's supplemental sales questionnaire. The petitioner is referencing information that was submitted in the original questionnaire response which was later revised by the respondent in its supplemental questionnaire response to the Department.

Moreover, it has been the Department's longstanding practice to treat royalty payments for production technology as cost of manufacturing, even in circumstances where the royalty payments were based on sales revenue. *See Extruded Rubber Thread from*

Malaysia, 57 FR 38465 (August 25, 1992) and *Certain Hot-Rolled Carbon Steel Flat Products, etc. from Canada,* 58 FR 37099, 37118 (July 9, 1993).

Comment 6: LGS asserts that the Department should accept amortization of purchased R&D amounts over the relevant contract period. LGS argues that the Department's decision in the preliminary determination to expense purchased R&D in the year incurred is inconsistent with the CIT decision in the less-than-fair-value investigation. *See Micron Technology.* LGS asserts that the *Micron* decision requires the Department to amortize R&D expenses over the life cycle of the product.

The petitioner argues that LGS's own financial statements expensed the purchased R&D in the year incurred. Therefore, all payments related to the purchased R&D should be acknowledged in the year in which they were incurred, since this is how the expenses were recorded in the company's books and records.

DOC Position: We agree with the petitioner that LGS's purchased R&D expenses should be acknowledged in the year in which they were incurred, since this is how the expenses were recorded in the company's books and records. *See* LGS COP/CV Verification Report of July 26, 1995 at page 8. Moreover, the *Micron* decision requires the Department to allow the allocation of R&D expenses over time, when the allocation is made in accordance with the generally accepted accounting practices in effect in the home country, and when Commerce is satisfied that those principles reasonably reflect all of the costs associated with the production of the subject merchandise. In this case, although the Korean GAAP may allow LGS to amortize its purchased R&D over a given period, LGS did not do so. Rather, LGS expensed purchased R&D for its financial statements, and amortized it over a longer period for the antidumping response. In these calculations, the Department relied on LGS's accounting system to determine the total R&D figure applicable to the analysis: it amortized any R&D expenses that LGS amortized in its own books and records and it expensed any R&D expenses that LGS expensed. As a result, the Department is not taking a position contrary to the CIT decision, nor is it rejecting the Korean GAAP which allows parties the option of expensing or allocating such costs. Due to the proprietary nature of LGS's internal accounting system, see the LGS COP/CV Verification Report for further information.

Comment 7: LGS noted the following clerical errors in the Department's computer program: (1) LGS notes that the Department did not apply the correct exchange rate to the home market letter of credit sales; (2) LGS notes clerical errors for duty drawback adjustment; (3) LGS argues that the computer program does not use the actual home market sales quantity in the cost test; (4) LGS notes that the Department's computer program inadvertently disregards the submitted data in the model match; (5) LGS argues that the Department's computer program does not correctly read the module cost of production data; and (6) LGS noted that the Department's computer program reads the wrong variable in the submitted information which affects the total cost of production calculation.

DOC Position: We agree with LGS on each of these points and have revised our calculations accordingly.

Hyundai

Comment 8: Hyundai maintains that the Department made a clerical error in its final calculations by incorrectly comparing all of its further-manufactured sales of memory modules to the CV of the imported merchandise. Hyundai argues that it is the Department's practice to resort to CV only in instances where there are insufficient home market sales above COP or insufficient home market sales during a contemporaneous period to be used with comparison to U.S. sales. Hyundai urges the Department to revise its final results calculations to include price-to-price comparisons for sales of further-manufactured products and suggests two possible methodologies as discussed below.

The petitioner maintains that the Department was correct in comparing respondents' further-manufactured U.S. sales to CV. The petitioner argues that the complexity of determining the basis on which to allocate the U.S. module price net of further-manufactured costs to the different types of DRAMS in the modules made CV a reasonable choice of comparison methodology. The petitioner urges the Department to adhere to its comparison methodology for further-manufactured U.S. sales as contained in its preliminary results of review.

DOC Position: We agree that it is generally the Department's policy to calculate the foreign market value for the U.S. sales of further-processed merchandise on the basis of products in the condition as imported, not as in the condition sold.

The prices for the further-manufactured modules were an inadequate basis for comparison because there are no comparable home market sales for U.S. sales of memory modules with specific collections of different types of DRAMS assembled together in particular configurations for specific applications. The configuration and application of mixed memory modules are critical factors in determining the foreign market value (FMV) of these modules. Therefore, we resorted to CV in accordance with section 1677b(a)(2) of the Tariff Act. We calculated the FMV for the modules sold in the United States using the Department's traditional methodology. To obtain the FMV, we have summed the cost of production for each DRAM included on each type of module to obtain the cost of all the imported components included on the module. We then developed the FMV by applying the appropriate selling, general and administrative expenses, and home market profit to arrive at the CV of the imported components of the module. We then compared the CV of the imported parts to the USP of the module sold in the United States, less appropriate amounts for selling expenses, freight, further manufacturing and profit. We believe that this is the most reasonable comparison methodology for these types of sales given the circumstances mentioned above. We disagree that in this instance either proposed method would lead to an accurate determination of FMV because both would require adjustments to the USP for the purposes of matching the FMV of the product sold in the home market.

In respondent's first proposed method, the Department would derive an FMV by summing the FMVs of DRAMS sold in Korea in the same number and combination as they appear on the modules sold in the United States. However, we note that this new ''bundled FMV'' would represent an FMV for a product that is not sold in the home market, and as such, represents the cost of a hybrid and a hypothetical product. Furthermore, there is no indication that the resultant ''bundled FMV'' would be comparable to the price of the product sold in the United States.

In respondent's second proposed method, the Department would strip the United States price (USP) of the modules sold in the United States down to the price of each of its component parts. Then the Department would make adjustments for the total number of the individual DRAMS sold in the United States, and compare the results with the FMVs otherwise developed for home market sales. We rejected this methodology because it would require adjustments to the USP for matching

purposes and would not guarantee an accurate comparison.

Comment 9: The petitioner maintains that Hyundai failed to provide the Department with the necessary sales information in its August 29, 1995, questionnaire response on sales of DRAMS contained in personal computers and computer workstations sold by HEA's ISD and Axil divisions. The petitioner urges the Department to reject Hyundai's entire questionnaire response for failure to report complete information on sales of subject merchandise during the POR and apply total BIA. Alternately, if the Department decides not to apply total BIA to Hyundai's entire questionnaire response, the petitioner urges the Department to use BIA in calculating the U.S. price of the value-added products in accordance with the petitioner's methodology contained in the petitioner's October 11, 1995 case brief.

Hyundai argues that it reported complete sales information on computers and workstations which were sold with the memory modules separately invoiced (option sales) and all reasonably available information on sales of computers and workstations which were sold without separately invoiced memory modules (embedded sales). Hyundai maintains that it would have been unreasonable to require complete sales information on embedded sales by ISD and Axil due to the extreme complexity of the value-added calculations. According to Hyundai, this type of calculation would have required an additional complete COP calculation and verification for all input products in the computers and workstations (e.g., computer monitors). Hyundai argues, that because embedded sales by Axil and ISD constituted an extremely small portion of HEA's U.S. sales of DRAMS, it would have been unreasonable to require full sales information on the embedded sales of subject merchandise.

Hyundai further asserts that total BIA is unwarranted, as Hyundai cooperated fully with the Department during the course of the first administrative review including the sales and COP verifications. Hyundai urges the Department to calculate the dumping margins on embedded sales by applying one of the following three margins to these sales: (1) the weighted-average margin found for the remainder of HEA's sales, (2) the margin calculated for Axil and ISD's option sales, or (3) the weighted-average margin from the original LTFV investigation.

DOC Position: We agree with the petitioner that Hyundai should have provided complete information on embedded sales of DRAMS by HEA's two computer divisions during the POR. There is neither a statutory nor a regulatory basis for excluding any U.S. sales of subject merchandise from review regardless of the complexity of the required calculations. *See AFBs 1995.* The statute requires the Department to analyze all U.S. sales within the POR. *See* section (a)(2)(A) (1994) of the Tariff Act.

However, we disagree that total BIA is warranted in this case. In cases where the respondent has substantially cooperated with the Department, as Hyundai has in this case, we do not typically apply total BIA, but rather apply partial BIA to the particular deficiencies in a respondent's questionnaire response. *See Industrial Nitrocellulose from the United Kingdo DOC Position: m, Final Results of Antidumping Duty Administrative Review,* 59 FR 66902, 66903 (December 28, 1994), and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof, from France, et al., Final Results of Antidumping Duty Administrative Reviews and Revocation in Part,* 58 FR 39729, 39739–40 (July 26, 1993).

In deciding what to use as BIA, the Department's regulations provide that the Department may take into account whether a party refuses to provide requested information (19 CFR 353.37(b)). Thus, the Department determines, on a case-by-case basis, what constitutes BIA. For the purposes of these final results, we applied the following two-tier BIA analysis where we were unable to use a company's response for purposes of determining a dumping margin (*see Final Results of Antidumping Duty Administrative review of Antifriction Bearings and Parts Thereof from France, et al.,* 58 FR 39739, July 26, 1993):

1. When a company refuses to cooperate with the Department or otherwise significantly impedes these proceedings, we used as BIA the higher of (1) the highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the less than fair value investigation (LTFV) or prior administrative reviews; or (2) the highest rate found in this review for any firm for the same class or kind of merchandise in the same country of origin.

2. When a company substantially cooperates with our requests for information and, substantially cooperates in verification, but fails to provide the information requested in a timely manner or in the form required or was unable to substantiate it, we used as BIA the higher of (1) the highest rate ever applicable to the firm for the same class or kind of merchandise from either the LTFV investigation or a prior administrative review or if the firm has never before been investigated or reviewed, the all others rate from the LTFV investigation; or (2) the highest calculated rate in this review for the class or kind of merchandise for any firm from the same country of origin.

Hyundai, although it failed to report full cost data for its sales of embedded DRAMS in the United States, cooperated substantially with our requests for information and our sales and cost verifications. Accordingly, we applied the second-tier BIA rate of 11.16 percent to HEA's sales of embedded DRAMS. This rate represents the highest rate ever applicable to Hyundai.

We found petitioner's methodology in calculating partial BIA to be inappropriate because it recalculated prices for memory modules whose actual prices were obtained from the separate invoices prepared for these products. *See Mechanical Transfer Presses from Japan,* 55 FR 335, 337 (January 4, 1990).

Comment 10: The petitioner maintains that, based upon information contained in certain U.S. sales verification exhibits, there are large unaccounted for quantities of DRAMS transferred from HEA to its computer divisions ISD and Axil. The petitioner maintains that there is no correlation between the total quantity of DRAMS transferred to ISD and Axil during the POR and the total quantity of DRAMS sold by these two divisions during the POR. The petitioner urges the Department to account for the alleged ''loose'' DRAMS by assigning a USP of zero to all DRAMS imported by HEA during the POR and including them in the dumping analysis.

Hyundai maintains that the petitioner used incorrect numbers in making the above assertion and that there is not necessarily a correlation between the quantity of DRAMS transferred to ISD and Axil and the quantity of DRAMS sold by these two divisions during the POR. Hyundai argues that the petitioner failed to consider that a significant percentage of ISD and Axil sales were exported and that the Department fully verified total quantity and value of DRAMS sold in the United States.

DOC Position: We agree with Hyundai. We believe that the petitioner's assertion that a correlation must exist between the total quantity of DRAMS imported and sold during the POR is unfounded. The petitioner ignores the number of DRAMS and memory modules exported to third countries and, in their October 11, 1995 Case Brief, base part of their argument on an assumption that computer assemblers can only use DRAMS mounted on SIMMs boards. There is no

evidence on the record of this proceeding to support such an assertion. In addition, we thoroughly verified total quantity and value of all U.S. sales of subject merchandise during our U.S. sales verification of HEA, including sales by ISD and Axil, and found no discrepancies. *See* Verification of the U.S. Sales Questionnaire Response of Hyundai Electronics America, Inc. In the First Antidumping Administrative Review of Dynamic Random Access Memory Semiconductors from Korea, December 12–15, 1994. HEA U.S. Sales Verification Report, pp. 4–10.

Comment 11: The petitioner maintains that Hyundai misclassified its reported advertising expenses in the home and U.S. markets. As evidence for this assertion, the petitioner points out that Hyundai classified a trade journal ad in the home market for future products under development but not commercially available as direct but classified a magazine ad for an existent product in the United States as indirect. The petitioner claims that it is inconsistent to classify an existent product as indirect while classifying a future product as direct. The petitioner urges the Department to reclassify all of Hyundai's U.S. advertising expenses as direct expenses and all of Hyundai's home market advertising expenses as indirect expenses.

Hyundai argues that its advertising classification is correct and that the petitioner ignores the type of customer to which the advertisement is targeted and the type of publication in which it is published. Hyundai maintains that the advertisements for future generation products were printed in a publication directed at end-users of Hyundai's DRAMS and is properly classified as a direct expense. Hyundai also argues that advertising expenses for future generation products are not inherently indirect as the scope of the review covers future generation products. Finally, Hyundai maintains that the petitioner ignored the fact that the majority of Hyundai's home market advertising expenses consisted of television advertisements, which are clearly direct expenses since they are aimed at the end-user.

DOC Position We agree with Hyundai. Hyundai's classification of its home market and U.S. advertising expenses is consistent with our policy. As stated on page V–13 of our instructions in our antidumping questionnaire, the classification of an advertising expense as direct or indirect depends upon to whom the advertisement is directed. It is our policy to classify advertising expenses directed to a respondent's end-user as direct while advertising directed toward the respondent's intermediary's customers as indirect. *See Antifriction (Other Than Tapered Roller Bearings) Bearings from the France, et. Al.; Final Results of Antidumping Duty Administrative Reviews; Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders,* 60 FR 10909 (February 28, 1995) and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Republic of Germany, et al., Final Results of Antidumping Duty Administrative Review,* 54 FR 18992, 19507 (May 3, 1989). For the one sample U.S. advertisement mentioned by the petitioner, it is clear from our U.S. sales verification that this advertisement was directed to original equipment manufacturers (OEMs), not the distributors' customers. Thus the U.S. magazine ad was properly classified as an indirect expense. *See* HEA U.S. Sales Verification Report. Regarding the one home market advertisement concerning a product under development, we agree that certain costs for these products are properly included in the scope of this review. *See DRAMS LTFV Final 1993.* Finally, we do not believe that two advertisements constitute sufficient evidence for questioning respondent's advertising expenses, especially in light of the thorough home market and U.S. sales verifications conducted by the Department. *See Pure and Alloy Magnesium from Norway,* 57 FR 30942 (July 13, 1992).

Comment 12: The petitioner argues that the Department should revise Hyundai's reported U.S. inventory carrying costs for further-manufactured products by including the time during which the further-manufactured products are undergoing certain processing to the time the product was in inventory.

Hyundai maintains that its inventory carrying cost methodology is in accordance with previous Departmental precedents, including the final results of the original investigation. Hyundai argues that the Department should only make an inventory carrying cost adjustment to U.S. price for finished, not unfinished merchandise held in inventory.

DOC Position: We agree with Hyundai that an inventory carrying cost adjustment to U.S. price should only be made for finished goods in inventory and should not include unfinished goods, because unfinished goods represent production expenses rather than U.S. selling expenses. *See DRAMS LTFV Final 1993* at 15476 (Comment 32) and *Roller Chain, Other Than Bicycle, from Japan, Final Results of Antidumping Administrative Review,* 58 FR 30769 (May 27, 1993).

Comment 13: The petitioner maintains that Hyundai's purchase of construction services from a related company may not be at arms-length. As evidence for this assertion, the petitioner cites certain COP verification exhibits which the petitioner purports demonstrate that the related construction firm earned a lower profit on sales to HEI than on sales to other companies. The petitioner maintains that these exhibits also show that sales of construction services to HEI by the related party were made at prices below COP. The petitioner urges the Department to presume that all construction services were provided to HEI at prices below COP and calculate a BIA rate on these services by increasing the acquisition and depreciation costs claimed by HEI to reflect market-based values.

Hyundai contends that the record of this proceeding does not support the petitioner's assertion that certain construction services purchased by HEI from a related party were not at arms-length prices. Hyundai argues that the petitioner misread the related party's financial statements contained in the COP verification exhibits and that the services were provided at prices comparable to those charged other companies.

DOC Position: We agree with Hyundai. During our home market sales and COP verifications of Hyundai in Korea, we examined the issue of related parties to determine whether transactions between these parties and HEI were at arms-length. We specifically examined the transactions between HEI and a related party which provided construction services during the POR. We determined that, based upon prices charged to other companies for construction services, the services purchased by HEI were at arms-length. *See* page 5 and Exhibit 33 of the Report on the Verification of the Cost of Production Questionnaire Response of Hyundai Electronic Industries, Inc., April 17, 1995 (HEI COP/CV Verification Report).

Comment 14: The petitioner maintains that the Department made a clerical error in its assignation of BIA to certain sales due to an incorrect decimal point in the BIA rate of 11.16 percent. The petitioner also maintains that the Department made a clerical error in the final calculations by failing to test all of HEI's reported profit figures to check that the larger of the actual profit amount or the statutory eight percent is used in the calculation of CV.

DOC Position: We agree with the petitioner and have revised our final calculations accordingly.

Comment 15: Hyundai maintains that three clerical errors are contained in the Department's model matching section of the preliminary calculations. Hyundai argues that these errors are as follows: (1) the calculations did not identify similar products where there was not an identical home market match for a U.S. sale, (2) the model matching calculations fail to include the 90/60 day rule for identifying contemporaneous matches, and (3) the calculations' matching hierarchy mistakenly ranks the month of sale above the level of trade.

DOC Position: We agree with Hyundai and have corrected the model matching of our calculations accordingly for the final results of review.

Comment 16: Hyundai maintains that the Department's preliminary calculations mistakenly double count certain U.S. sales due to a clerical error.

DOC Position: We agree and have revised our final calculations accordingly.

Comment 17: Hyundai maintains that the Department's preliminary calculations contained a clerical error in its calculation of Hyundai's ESP offset cap. Hyundai maintains that the preliminary calculations failed to include U.S. commissions in the ESP offset cap.

DOC Position: We agree and have revised the ESP offset cap portion of our final calculations to include U.S. commissions.

Comment 18: Hyundai and the petitioner maintain that the Department's preliminary calculations contained a clerical error in its calculation of profit for CV. Hyundai argues that the Department failed to recompute Hyundai's profit to account for the revisions the Department made to Hyundai's reported COP data for the preliminary results of review. The petitioner argues that the preliminary calculations automatically applied the statutory minimum profit percentage of eight percent for all sales of DRAMS without first testing to determine whether the actual profit was less then eight percent.

DOC Position: We agree and have recomputed Hyundai's profit for CV in our final calculations to reflect the increase in Hyundai's COP. We also revised the preliminary calculations to compare Hyundai's actual profit to the statutory minimum of eight percent in calculating CV for the non-further manufactured sales where this did not occur. For our final calculations, we used the statutory minimum in cases where Hyundai's actual profit was below the statutory minimum.

Comment 19: Hyundai maintains that the Department's preliminary calculations contained a clerical error in the calculation of U.S. price. Hyundai argues that the Department failed to add duty drawback to USP in its net price calculations.

DOC Position: We agree and have revised our final results calculations accordingly.

Comment 20: Hyundai maintains that the Department's preliminary results calculations contained three clerical errors in its calculation of FMV. Hyundai maintains that these clerical errors were as follows: (1) the calculations failed to convert home market selling expenses incurred in U.S. dollars into Korean won, (2) the Department mistakenly added U.S. repacking expense to HEI's reported home market price, and (3) the Department failed to deduct indirect selling expenses form FMV for further-manufactured sales.

DOC Position: We agree and have revised our final results calculations accordingly.

Final Results of Review

Upon review of the comments submitted, the Department has determined that the following margins exist for the companies for the period October 29, 1992 through April 30, 1994:

Manufacturer/exporter	Percent margin
LG Semicon Co., Ltd	0.00
Hyundai Electronic Industries, Inc	0.06

The Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions concerning each respondent directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed firms will be zero percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or in the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 3.85%, the all others rate established in the LTFV investigation. Samsung Electronics Co., Ltd. (Samsung), formerly a respondent in this administrative review, was excluded from the antidumping duty order on DRAMS from Korea on February 8, 1996. *See Final Court Decision and Partial Amended Final Determination: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea,* 61 FR 4765 (February 8, 1996).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as the final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Date: April 26, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–11246 Filed 5–3–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–533–809]

Certain Forged Stainless Steel Flanges From India; Initiation of New Shipper Antidumping Duty Administrative Reviews

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

ACTION: Notice of Initiation of New Shipper Antidumping Duty Administrative Reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct two new shipper administrative reviews of an antidumping duty order with a February anniversary date. In accordance with the Department's Interim Regulations, we are initiating these administrative reviews.

EFFECTIVE DATE: May 6, 1996.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4837.

SUPPLEMENTARY INFORMATION:

Background

On February 28 and February 29, 1996, the Department received timely requests, in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and section 353.22(h) of the Department's Interim Regulations (60 FR 25130, 25134 (May 11, 1995)) for new shipper reviews of an antidumping duty order with a February anniversary date.

Initiation of Review

In accordance with section 751(a)(2)(B) of the Act, and section 353.22(h) of the Department's interim regulations, we are initiating new shipper reviews of the antidumping duty order on certain forged stainless steel flanges from India. We intend to issue the final results of these reviews not later than 270 days from the date of publication of this notice.

Antidumping duty proceeding	Period to be reviewed
India:	
Certain Forged Stainless Steel Flanges A–533–809	9/1/95–2/29/96
Patheja Forgings, Ltd.	
Isibars, Ltd.	

We will instruct the U.S. Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise in accordance with section 353.22(h)(4) of the Department's interim regulations.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b).

This initiation and this notice are in accordance with section 751(a) of the Act and section 353.22(h) of the Department's interim regulations.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–11123 Filed 5–3–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–005]

High Power Microwave Amplifiers and Components Thereof From Japan; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by the petitioner, MCL, Inc., the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on high power microwave amplifiers and components thereof (HPMAs) from Japan. This review covers NEC Corporation (NEC), a manufacturer/exporter of this merchandise to the United States, and the period July 1, 1994, through June 30, 1995. The firm failed to submit a response to our questionnaire. As a result, we have preliminarily determined to use facts otherwise available for cash deposit and appraisement purposes.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the arguments: (1) a statement of the issues and (2) a brief summary of the arguments.

EFFECTIVE DATE: May 6, 1996.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA).

Background

On July 31, 1995, the petitioner, MCL, Inc., requested in accordance with section 353.22(a) of the Department's regulations (19 CFR 353.22(a)) an administrative review of the antidumping duty order (47 FR 31413, July 20, 1982) on HPMAs from Japan with respect to NEC, a manufacturer/exporter of this merchandise to the United States, and covering the period July 1, 1994, through June 30, 1995. We published a notice of initiation of the review on August 16, 1995 (60 FR 42500). The Department is now conducting this review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this review are high power microwave amplifiers and components thereof. High power microwave amplifiers are radio-frequency power amplifier assemblies, and components thereof, specifically designed for uplink transmission in C, X, and Ku bands from fixed earth stations to communications satellites and having a power output of one kilowatt or more. High power microwave amplifiers may be imported in subassembly form, as complete amplifiers, or as a component of higher level assemblies (generally earth stations). This merchandise is currently classifiable under item 8525.10.80 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

The review covers NEC and the period July 1, 1994, through June 30, 1995 (POR).

Use of Facts Otherwise Available

We preliminarily determine, in accordance with section 776(c) of the Act, that the use of facts available is appropriate for NEC because it did not respond to the Department's antidumping questionnaire. We sent NEC a questionnaire seeking information necessary to conduct a review of NEC's sales of merchandise subject to this review. NEC did not respond to the questionnaire. Rather, NEC submitted a letter on January 18, 1996, stating that unrelated third parties

outside Japan sold subject merchandise to customers in the United States during the POR, but that NEC was ''not in a position to respond to the questionnaire based on the sales of subject merchandise made by unaffiliated third parties * * *.'' On February 15, 1996, the Department requested NEC to clarify whether NEC knew, or had reason to know, the ultimate destination of subject merchandise sold to these unaffiliated parties and requested NEC to report its sales to these customers as U.S. sales. NEC submitted a letter on February 26, 1996, stating that, at the time of sale, NEC had, or had reason to have, knowledge that the ultimate destination of the subject merchandise would be the United States. NEC asserted, however, that it was neither feasible nor appropriate for NEC to respond to the Department's questionnaire based upon these indirect sales. NEC again referred to its inability to provide information concerning sales of unaffiliated parties, but did not explain why it is not feasible to report its own sales of subject merchandise.

Because necessary information is not available on the record for the 1994–95 POR as a result of NEC withholding the requested information, we must make our preliminary determination based on facts otherwise available (section 776(a) of the Act).

The Department finds that, in not responding to the questionnaire, NEC failed to cooperate by not acting to the best of its ability to comply with a request for information from the Department.

Where the Department must base the entire dumping margin for a respondent in an administrative review on the facts available because that respondent failed to cooperate, section 776(b) of the Act authorizes the Department to use an inference adverse to the interests of that respondent in choosing the facts available. Section 776(b) of the Act also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Because information from prior segments of the proceeding constitutes secondary information, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See* H.R. DOC. No.316, Vol. 1, 103d Cong., 2d Sess. 870 (1994).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike for other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect to corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812 (February 22, 1996) (the Department disregarded the highest margin in that case as adverse BIA because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)).

In this case, the highest rate applicable to NEC from any prior segment of the proceeding is 41.4 percent. This is a margin calculated in the original investigation using information provided by NEC. We have selected 41.4 percent as the facts available margin for this POR. To the best of our knowledge, there are no circumstances indicating that this margin is inappropriate as adverse facts available (*see High Power Microwave Amplifiers and Components From Japan; Final Determination of Sales at Less Than Fair Value,* 47 FR 22134 (May 21, 1982)).

Preliminary Results of the Review

As a result of our review, we preliminarily determine that a margin of 41.4 percent exists for NEC for the period July 1, 1994, through June 30, 1995.

Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. Parties who submit arguments in this proceeding are requested to submit with the arguments: (1) a statement of the issues and (2) a brief summary of the arguments. The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

Upon completion of this administrative review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of administrative review for all shipments of HPMAs from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be that established in the final results of this administrative review; (2) for manufacturers and exporters not covered in this review, but covered in a previous review or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rates for all other manufacturers or exporters will be 33.4 percent, as explained below.

On May 25, 1993, the Court of International Trade (CIT) in *Floral Trade Council* v. *United States,* 822 F. Supp. 766 (CIT 1993), and *Federal Mogul Corporation* v. *United States,* 822 F. Supp. 782 (CIT 1993), decided that once an ''all others'' rate is established for a company it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original ''all others'' rate from the less-than-fair-value (LTFV) investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders for the purposes of establishing cash deposits in all current and future administrative reviews.

In this case, the Department established two ''all others'' rates in the final determination of the LTFV investigation (47 FR 22134, May 21, 1982). These rates were 25.4 percent for imports of TWT high power amplifiers and parts dedicated exclusively for use in TWT high power amplifiers and 41.4 percent for imports of Klystron high power amplifiers and amplifiers components not dedicated exclusively for use in TWT high power amplifiers. However, antidumping duty orders pertain to individual classes or kinds of merchandise (*see, e.g., Antidumping Duty Orders: Ball Bearings, Cylindrical Roller Bearings, and Spherical Plain Bearings, and Parts Thereof From Japan,* 54 FR 20904 (May 15,1989), and *Antidumping Duty Orders: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles From the People's Republic of China,* 56 FR 6622 (February 19, 1991)) and the Department's practice is to calculate a single ''all others'' rate for each class or kind of merchandise. There is no indication that this proceeding covers two classes or kinds of merchandise. Accordingly, we have calculated a single average of these two rates, which is 33.4 percent, as the ''all others'' rate for imports of this merchandise in a manner consistent with the CIT's decisions.

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: April 26, 1996.

Susan G. Esserman

Assistant Secretary for Import Administration.

[FR Doc. 96–11127 Filed 5–3–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–412–810]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Preliminary Results of Antidumping Administrative Review

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

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review; Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom in response to requests by respondent, United Engineering Steels Limited (UES), and petitioner, Inland Steel Bar Company. This review covers the period March 1, 1994 through February 28, 1995.

We have preliminarily determined that sales have been made below normal value (NV). Interested parties are invited to comment on these preliminary results. Parties who submit comments are requested to submit with each comment (1) a statement of the issue and (2) a brief summary of the comment.

EFFECTIVE DATE: May 6, 1996.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

SUPPLEMENTAL INFORMATION:

Background

The Department published in the Federal Register the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom on March 22, 1993 (58 FR 15324). On March 7, 1995, we published in the Federal Register (60 FR 12540) a notice of opportunity to request an administrative review of the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom covering the period March 1, 1994 through February 28, 1995.

In accordance with 19 CFR 353.22(a)(1), UES and the petitioner requested that we conduct an administrative review of UES's sales. We published a notice of initiation of this antidumping duty administrative review on April 14, 1995 (60 FR 19017). The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this review are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this review are other alloy steels (as defined by the *Harmonized Tariff Schedule of the United States* (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this review are provided for under subheadings 7213.20.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80.00. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this order remains dispositive.

This review covers the subject merchandise manufactured by UES, and the period March 1, 1994 through February 28, 1995.

United States Price

We used export price (EP) for sales to the United States, as defined in section 772(a) of the Act, because the merchandise was sold to unaffiliated U.S. purchasers prior to the date of importation. UES reported that EP was based on packed, delivered prices to customers in the United States. We made deductions, where applicable, for cash discounts, foreign inland freight, FOB charges in the United Kingdom,

ocean freight, marine insurance, U.S. Customs duties, brokerage and handling charges, and U.S. inland freight charges, in accordance with 19 CFR 353.41(d). We also made an adjustment for invoice corrections (billing adjustments) made after shipment. Because there is a concurrent review of the countervailing duty order on the subject merchandise, final assessments for UES will reflect the final results of the countervailing duty administrative review in accordance with 19 CFR 353.41(d)(iv).

UES's sales in the United Kingdom and to the United States were made in quantities of less than 25 metric tons and more than 25 metric tons. As we have done in all prior segments of the proceeding (*see Final Determination of Sales at Less Than Value; Certain Hot-Rolled Lead and Bismuth Carbon Steel Products,* 58 FR 6207, January 27, 1993, and *Preliminary Results of Antidumping Duty Administrative Review; Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom,* 50 FR 10063, February 23, 1995), the Department, where possible, matched U.S. and U.K. sales within two quantity groups: one of 25 tons or more, and one of less than 25 tons.

No other adjustments to EP were claimed or allowed.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared UES's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because UES's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV for UES, pursuant to section 773(a)(1)(B) of the Act.

Many of UES's home market sales were made to affiliated original equipment manufacturers (OEMs). It is the Department's practice, in situations where home market sales are made to affiliated parties, to determine whether sales to affiliated parties might be appropriate to use as the basis of NV by comparing prices of those sales to prices of sales to unaffiliated parties, on a model-by-model basis. Because UES made home market sales to affiliated OEMs during the POR, we tested these OEM sales to ensure that, on average, the affiliated-party sales were made at arm's length. To conduct this test, we compared the gross unit prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, invoice corrections, rebates and packing. As a result of our arm's-length test, we disregarded sales to the affiliated OEM customers in the home market. We did not require respondent to provide downstream sales by these customers because these customers manufactured the subject merchandise into merchandise not comparable to the merchandise covered by the order. UES also sold through affiliated resellers to unaffiliated customers and reported these unaffiliated-customer transactions. We used these unaffiliated transactions in our determination of NV.

Cost of Production Analysis

In the prior administrative review of UES, we disregarded from our calculations UES's home market sales found to be below the cost of production (COP). Therefore, in accordance with section 773(b)(2)(A)(ii) of the Act, the Department has reasonable grounds to believe or suspect that sales below the COP may have occurred during this review period. Thus, pursuant to section 773(b) of the Act, in this review we initiated a COP investigation of UES.

Before making any fair value comparisons, we conducted the COP analysis described below.

A. Calculation of COP

We calculated the COP based on the sum of UES's cost of materials and fabrication employed in producing the foreign like product, plus amounts for home market selling, general, and administrative expenses (SG&A) and packing costs in accordance with section 773(b)(3) of the Act. We relied on the home market sales and COP information provided by UES in its questionnaire responses.

B. Test of Home Market Prices

After calculating COP, we tested whether home market sales of lead and bismuth steel were made at prices below COP within an extended period of time in substantial quantities, and whether such prices permit recovery of all costs within a reasonable period of time. We compared model-specific COP to the reported home market prices less any applicable movement charges, rebates, and direct and indirect selling expenses.

C. Results of COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of respondent's sales of a given product were at prices less than COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the period of review (POR) were at prices less than the COP, we disregarded the below-cost sales because we determined that the below-cost sales were made within an extended period of time in ''substantial quantities'' in accordance with sections 773(b)(2) (B) and (C) of the Act, and because we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable period of time, as defined in section 773(b)(2)(D) of the Act. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product, and calculated NV based on constructed value (CV), in accordance with section 773(b)(1) of the Act.

Price-to-Price Comparisons

Pursuant to section 777A(d)(2), we compared the EPs of individual transactions to the monthly weighted-average price of sales of the foreign like product where there were sales at prices above COP, as discussed above. We based NV on packed, delivered prices to unaffiliated purchasers in the home market. We made adjustments, where applicable, in accordance with section 773(a)(6) of the Act. Where applicable, we made adjustments to home market price for invoice corrections, rebates, and inland freight. We also made a circumstance-of-sale adjustment for differences in credit insurance and product liability insurance expenses pursuant to section 773(1)(6)(iii) of the Act. Respondent claimed home market credit insurance expenses and product liability insurance as direct adjustments to normal value. However, respondent did not identify, as the Department's questionnaire requested, how these expenses were directly related to sales of the foreign like product. Therefore, consistent with our previous decisions on this issue (*see Final Determination of Sales at Less than Fair Value; Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom,* 58 FR 6207, January 27, 1993, and *Preliminary Results of Antidumping Duty Administrative Review; Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom,* 60 FR 10063, February 23, 1995), we have treated these home market expenses as indirect selling expenses. Accordingly, we made the circumstance-of-sale adjustments for indirect expenses by adding the amounts of credit insurance and the product liability insurance for each U.S. sale to the NV. In order to adjust for

differences in packing between the two markets, we increased home market price by U.S. packing costs and reduced it by home market packing costs. Prices were reported net of value added taxes (VAT) and, therefore, no deduction for VAT was necessary. We made adjustments, where appropriate, for physical differences in merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of UES's cost of materials and fabrication employed in producing the subject merchandise, SG&A and profit incurred and realized in connection with production and sale of the foreign like product, and U.S. packing costs. In accordance with section 773(e)(2)(A), we based SG&A and profit on the amounts incurred and realized by UES in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. We used the costs of materials, fabrication, and general and administrative expenses as reported in the CV portion of UES's questionnaire response. We used the U.S. packing costs as reported in the U.S. sales portion of UES's questionnaire response. We based selling expenses and profit on the information reported in the home market sales portion of UES's questionnaire response. See *Certain Pasta from Italy; Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 61 FR 1344, 1349 (January 19, 1996). For selling expenses, we used the average per-unit home market selling expenses of above-cost sales weighted by the total quantity sold. For actual profit, we first calculated the difference between the home market sales value and home market COP, for all above-cost home market sales, and divided the sum of these differences by the total home market COP for these sales. We then multiplied this percentage by the COP for each U.S. model to derive an actual profit.

Commission Offset

Because there are commissions on U.S. sales and not on home market sales, we made an adjustment for indirect selling expenses in the home market to offset the U.S. commissions. We applied the offset to NV or CV, as appropriate, in accordance with 19 CFR 353.56(b)(1).

We based the commission offset amount on the amount of the home market indirect selling expenses. We limited the home market indirect selling expense deduction by the amount of the commissions incurred on sales to the United States.

Preliminary Results of the Review

As a result of our comparison of EP and NV, we preliminarily determine that the following weighted-average dumping margin exists:

Manufacturer/Exporter	Period	Margin (percent)
United Engineering Steels, Limited (UES), (now British Steel, Engineering Steels Limited)	3/1/94–2/28/95	1.26

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. Parties who submit comments are requested to submit with their comments (1) a statement of the issue and (2) a brief summary of the comment. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between EP and NV may vary from the percentage stated above. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of certain hot-rolled lead and bismuth carbon steel products from the United Kingdom entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this review; (2) for merchandise exported by manufacturers or exporters not covered in these reviews but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 25.82 percent, the ''all others'' rate established in the LTFV investigation.

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)) and 19 CFR 353.22.

Dated: April 26, 1996.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 96–11248 Filed 5–3–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–423–602]

Industrial Phosphoric Acid From Belgium; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On November 15, 1995, the Department of Commerce (the Department) published the preliminary results of review of the antidumping duty order on industrial phosphoric acid (IPA) from Belgium (52 FR 31439; August 20, 1987). The review covers one manufacturer, Société Chimique Prayon-Rupel (Prayon), and exports of the subject merchandise to the United States during the period August 1, 1993, through July 31, 1994.

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

EFFECTIVE DATE: May 6, 1996.

FOR FURTHER INFORMATION CONTACT: David Genovese or Joseph Hanley, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, telephone: (202) 482–5254.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 1994, Prayon requested an administrative review of the antidumping duty order on IPA from Belgium. The Department initiated the review on September 16, 1994 (59 FR 47609), covering the period August 1, 1993, through July 31, 1994. On November 15, 1995, the Department published the preliminary results of review (60 FR 57398). The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of the Review

The products covered by this review include shipments of IPA from Belgium. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2809.20. The HTS item numbers are provided for convenience and U.S. Customs purposes. The written description remains dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results of review. We received comments from Prayon and from FMC Corporation and Monsanto Company, two domestic producers of industrial phosphoric acid.

Comment 1

Prayon argues that for purchase price (PP) sales, when there are commissions in the U.S. market but not in the home market, it is the Department's practice to make a circumstance-of-sale (COS) adjustment by first adding U.S. commissions to the weighted-average foreign market value (FMV). Prayon asserts that FMV is then reduced (offset) by the lesser of the home market indirect selling expenses or U.S. commissions. Prayon argues that in the preliminary results of review, the Department deducted U.S. commissions from the United States price rather than add those commissions to the FMV. Prayon asserts that in its final determination, the Department should add U.S. commission to the weighted-average FMV and then reduce FMV by Prayon's home market indirect selling expenses capped by U.S. commissions.

Department's Position

We agree with Prayon. As Prayon states, in PP situations, when there are commissions in the U.S. market but not in the home market, it is the Department's practice to add U.S. commissions to FMV and then subtract from FMV home market indirect selling expenses capped by U.S. commission expense. See, *e.g.*, *Certain Internal-Combustion Industrial Forklift Trucks from Japan*; Final Results of Antidumping Duty Administrative Review, 59 FR 1,374 (January 10, 1994). Accordingly, for these final results, we did not subtract U.S. commissions from U.S. price. Rather, we added U.S. commissions to FMV and then subtracted from FMV home market indirect selling expenses capped by U.S. commission expense.

Comment 2

Prayon argues that in calculating the FMV offset for U.S. commissions, the Department should have included inventory carrying costs in its pool of home market indirect selling expenses since such costs are indirect selling expenses.

Department's Position

We agree with Prayon. For these final results, we have included inventory carrying costs in the pool of home market indirect selling expenses when calculating the FMV offset for U.S. commissions.

Comment 3

Petitioners argue that by accepting Prayon's reported credit expense, the Department has based the date of payment on the date that Prayon received a transfer of funds from its wholly-owned subsidiary, Prayon Services et Finance S.A. (Prayon Services). Petitioners contend that this approach treats a transfer of funds between a parent company and its wholly-owned subsidiary as the equivalent of an independent payment for the merchandise in question.

Petitioners assert that in accepting the discounted transaction between Prayon and Prayon Services, the Department appears to rely on Prayon's allegation that the Belgian tax law required Prayon Services to use a market-based discount rate. Petitioners assert that the issue of whether Prayon Services' discount rate is acceptable under Belgian tax law is irrelevant. Rather, the central issue is when payment is received on the sale of the merchandise in question. Petitioner argues that a transfer of funds between a wholly-owned subsidiary and its parent is simply not, as a matter of economic reality, a payment in the context of the sale of this merchandise.

Petitioner further contends that for these final results, the Department, when calculating credit expense, should measure the time period in which credit is extended in a particular transaction from the date of shipment of the merchandise to the date payment is received from the purchaser of such merchandise.

Prayon argues that the amount by which accounts receivables are discounted in factoring transactions is an appropriate measure of credit cost since the discount accepted by Prayon is Prayon's cost of financing.[1] Prayon asserts that there is no merit in Petitioners' argument that credit costs must always be calculated as the cost of financing the resulting accounts receivable from the date of shipment of the merchandise until payment is received from the purchaser of such merchandise. Moreover, asserts Prayon, where a factoring transaction has taken place and payment is received from a third party, Petitioners' calculation of

[1] Prayon's accounts receivable are discounted through a factoring transaction with Prayon Services, a wholly-owned subsidiary established in compliance with Belgian law. ''Factoring is a type of financial service whereby a firm {in this case Prayon} sells or transfers title to its accounts receivable to a factoring company {*i.e.*, the factor, Prayon Services}, which then acts as principal, not as an agent. The receivables are sold without recourse, meaning that the factor {Prayon Services} cannot turn to the seller in the event accounts prove uncollectible.'' Barron's Financial Guides, *Dictionary of Finance and Investment Terms*, Third Edition, 1991, at page 136. Prayon engages in discount factoring meaning that it sells its accounts receivables at a discount from face value and obtains immediate payment from Prayon services.

credit cost does not measure the seller's cost of financing the sale, and consequently its use would be inappropriate.

Furthermore, Prayon asserts that the anticipated date of payment of the receivable is taken into account in determining the amount of the discount. Accordingly, the actual date on which Prayon Services ultimately receives payment from the purchaser has no effect on Prayon's return. Prayon argues that the Department has expressly recognized this in an analogous circumstance where a seller is given a promissory note in exchange for merchandise and, prior to the stipulated payment date, sells the note at a discount to a financial institution. Prayon cites *Lightweight Polyester Filament Fabrics from the Republic of Korea,* 48 FR 49,679 (1983), in which the Department stated that:

> By imputing an interest expense from the date of delivery to the date of payment, the expense incurred for granting credit is recognized. Further, when a note received for payment of a sale is discounted prior to its maturity, this amount represents the credit cost and we recognize this.

Prayon asserts that it is clear that, where the seller of merchandise concerned engages in a bona fide sale of a purchaser's debt to a factor or other financing entity, the seller's credit cost for the merchandise sales transaction is the discount taken by the purchaser of the receivable.

With regard to Prayon's relationship to Prayon Services, Prayon argues that the amount of discount taken in the sale of the accounts receivable can be used since the record shows that transactions between the two companies were conducted on an arm's-length basis. Prayon states that it sold all of its receivables at a discount to Prayon Services, which is an official coordination center certified under Belgian law. Prayon, citing to its supplemental questionnaire response of April 27, 1995 (at page 12), states that under Belgian law:

> The statutory requirement is that the factoring of accounts by the coordination center be conducted on arm's-length terms. As part of the certification process and on an ongoing basis, Prayon must demonstrate that the rates negotiated between Prayon and Prayon Services et Finance do not exceed those charged between independent parties and are in fact comparable to those charged by independent banks and other financial institutions.

Prayon argues that the antidumping law does not contemplate, and it is not the Department's practice, that all related party transactions are to be disregarded regardless of their terms and circumstances. As an example, Prayon cites to the antidumping regulations' related party provision (19 C.F.R. § 353.45(a)) which states that the Department will calculate foreign market value based on a sale by a producer or reseller to a related party if the Department is satisfied that ''the price is comparable to the price at which the producer or reseller sold such or similar merchandise to a person not related to the seller.'' Prayon also cites to 19 U.S.C. § 1677b(e)(2) which provides that the Department may disregard related party transactions in determining any element of value in constructed value calculations, if ''the amount representing that element does not fairly reflect the amount usually reflected in sales in the market under consideration of merchandise under consideration.''

Prayon, citing to *Certain Cold-Rolled Carbon Steel Flat Products from Germany,* 60 FR 65,264 (December 19, 1995) (hereinafter *Steel Flat Products from Germany),* states that the Department squarely held that it would use related party transactions in calculating the credit cost adjustment where ''information on the record indicates that the intracompany loans in question were made at what could be considered market rates.'' Similarly, in *Fresh Kiwifruit from New Zealand,* 57 FR 13,695 (April 17, 1992), the Department rejected an effort by a respondent to disregard a related-party loan on the ground that ''there was no evidence that the interest rate on the related party loan did not reflect market interest rates.''

Prayon concludes by stating that the record in this proceeding affirmatively shows that the sales of Prayon's accounts receivable to the coordination center are conducted on arm's-length terms and, specifically, that the discount rates negotiated between the parties are comparable to those charged by independent banks and other financial institutions in Belgium. Accordingly, Prayon argues, the Department's preliminary determination that the amount of discount taken represents Prayon's actual cost of financing is appropriate and consistent with the law and the Department's practice.

Department's Position

When determining credit expense in the home market, the Department is concerned with the expense, real or imputed, incurred by a respondent when it sells its merchandise on account. Accordingly, we agree with Prayon that since factoring is a recognized method of financing receivables, the discount from face value can be used to establish credit expense if the factoring transactions are at arm's-length (*i.e.,* the discount is representative of market rates). Moreover, if the payment between Prayon and Prayon Services (*i.e.,* between a parent and its wholly-owned subsidiary) is determined to be at arm's-length, it is the Department's policy to recognize this payment as payment for the collection services in question rather than as an intra-company transfer of funds. See, *e.g., Steel Flat Products from Germany* cited by the respondent. However, upon a further examination of the record in this review, the Department is not satisfied that the discount rate ''charged'' by Prayon Services, when factoring Prayon's accounts receivables, is representative of market rates.

In its supplemental questionnaire response of April 27, 1995 (at page 14–15), Prayon calculated a weighted-average credit expense for its home market sales to each customer for each month during the POR using two different methods, one which calculates Prayon's actual cost of discounting the invoices to the coordination center and one which calculates an imputed credit expense based on the date of payment by the customer and the short-term interest rate for loans denominated in Belgian francs. In almost all home market observations, the credit expense calculated using the discount rate method is substantially higher than the imputed credit expense (*i.e.,* the market rate) Prayon would have incurred had it not sold its accounts receivable to Prayon Services.

Due to the substantial difference between the two methodologies, the Department is not satisfied that the discount rate ''charged'' by Prayon Service is representative of market rates. Moreover, since Prayon sold all of its accounts receivable to Prayon Services, the Department is unable to compare the discount rate charged by Prayon Services with a discount rate charged by an unrelated party to insure that the rate is comparable to market rates.

Additionally, we are not convinced that Prayon Service's legal obligation under Belgian law is sufficient proof that Prayon Services actually charged an arm's-length discount rate to Prayon. Prayon states that Prayon Services was established under Belgian law, which provides certain tax benefits for companies organized and operated according to certain specified requirements. However, the requirement that the factoring of accounts meet Belgian law requirements in order to capture certain tax benefits may not be

a reliable benchmark for U.S. antidumping purposes. This is supported by the Department's determination in *Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products from Japan,* 58 FR 37154, 37158 (July 9, 1993) (''There is no requirement that U.S. antidumping practice conform to Japanese antitrust laws or practices which have entirely different purposes and standards'').

Therefore, because the standard established by Belgian law is not sufficiently similar to that established by the Department, as evidenced by the substantial difference between Prayon's discount rate and the Department's date of payment method, we cannot rely on Prayon's compliance with that law as evidence that the rate charged by Prayon Services to Prayon is at arm's-length.[2]

Accordingly, for these final results, the Department, when determining credit expense incurred by Prayon on its home market sales, has relied upon Prayon's reported credit expense based upon the date of payment by Prayon's customer to Prayon Services.

Final Results of Review

Based on our analysis of the comments received, and our changes to the final computer program, we have determined, as we did in the preliminary determination, that no antidumping margin exists for Prayon for the period August 1, 1993 to July 31, 1994. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for Prayon will be zero percent; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous review or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, earlier reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review, earlier reviews, or the original investigation, whichever is the most recent; and (4) the ''all others'' rate, as established in the original investigation, will be 14.67 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: April 26, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–11117 Filed 5–3–96; 8:45 am]

BILLING CODE 3510–DS–P

[2] Indeed, a review of the translated official certification letter and royal decree recognizing Prayon Services (submitted as Appendix 6 of Prayon's supplemental questionnaire of April 27, 1995) indicates that there are allowable exceptions to the arm's-length requirements.

[A–508–604]

Industrial Phosphoric Acid From Israel; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On February 8, 1996, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on industrial phosphoric acid from Israel (61 FR 4766). The review covers one exporter, Haifa Chemicals, Ltd. (Haifa), and the period August 1, 1994 through July 31, 1995.

We gave interested parties an opportunity to comment on the preliminary results of review. Because the Department received no comments, these final results of review remain unchanged from the preliminary results of review.

EFFECTIVE DATE: May 6, 1996.

FOR FURTHER INFORMATION CONTACT: Amy S. Wei or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–5253.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department—s regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On August 25, 1995, FMC Corporation and Monsanto Company, two domestic producers of industrial phosphoric acid, requested an administrative review of the antidumping duty order on industrial phosphoric acid from Israel. On September 15, 1995, the Department published the initiation of its administrative review of the antidumping duty order on industrial phosphoric acid from Israel, covering one exporter, Haifa, and the period August 1, 1994 through July 31, 1995 (60 FR 47930). On

February 8, 1996, the Department published the preliminary results of review. In the preliminary results of review, the Department preliminarily determined that there were no shipments of the subject merchandise during the period of review and assigned Haifa the rate applicable to it from its most recent administrative review. The Department has now completed this administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by the review are shipments of industrial phosphoric acid, classifiable under item number

2809.20.00 of the Harmonized Tariff Schedule (HTS). HTS item numbers are provided for convenience and for Customs purposes. The written description remains dispositive.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. Because the Department received no comments, we have not changed the rate from the preliminary results. Accordingly, the following deposit requirement will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for Haifa will be 6.82 percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in any review or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 1.77 percent, the —all others— rate from the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26(b) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675 (a)(1)) and 19 CFR 353.22.

Dated: April 26, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–11126 Filed 5–3–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–059]

Pressure Sensitive Plastic Tape From Italy; Termination of Antidumping Duty Administrative Review

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

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: On November 16, 1995, the Department of Commerce (the Department) published in the Federal Register (60 FR 57573) the notice of initiation of the administrative review of the antidumping duty finding on pressure sensitive plastic tape from Italy. We are terminating this review as a result of the timely withdrawal by the petitioner, Minnesota Mining and Manufacturing Company (3M) of its request for the review.

EFFECTIVE DATE: May 6, 1996.

FOR FURTHER INFORMATION CONTACT:

Todd Peterson, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, telephone: (202) 482–4195.

SUPPLEMENTARY INFORMATION:

Background

On October 30, 1995, 3M requested an administrative review for 3M Italia S.p.A. of the antidumping duty finding on pressure sensitive plastic tape from Italy for the period October 1, 1994, through September 30, 1995, pursuant to 19 CFR 353.22(a)(2). On November 16, 1995, the Department published in the Federal Register (60 FR 57573) the notice of initiation of that administrative review. 3M timely withdrew its request for a review on February 5, 1996, pursuant to 19 CFR 353.22(a)(5). As a result, the Department is terminating this review.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended (19 U.S.C. 1675) and 19 CFR 353.22(a)(5).

Dated: March 21, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–11125 Filed 5–3–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–538–802]

Shop Towels From Bangladesh; Preliminary Results of Antidumping Duty Administrative Review.

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

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from the petitioner, Milliken & Company, the Department of Commerce is conducting an administrative review of the antidumping duty order on shop towels from Bangladesh. The review period is March 1, 1994, through February 28, 1995. This review covers six manufacturers/exporters. The preliminary results of this review indicate the existence of dumping margins for several manufacturers/exporters during the period.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: May 6, 1996.

FOR FURTHER INFORMATION CONTACT: Davina Hashmi or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, D.C. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA).

Background

On March 7, 1995, the Department of Commerce (the Department) published a notice of ''Opportunity to Request an Administrative Review'' (60 FR 12540) of the antidumping duty order on shop towels from Bangladesh (57 FR 9688, March 20, 1992) for the period March 1, 1994, through February 28, 1995. On March 27, 1995, the petitioner, Milliken & Company (Milliken), requested an administrative review of six manufacturers/exporters: Eagle Star Mills, Ltd. (Eagle Star); Greyfab (Bangladesh) Ltd. (Greyfab); Hashem International (Hashem); Khaled Textile Mills Ltd. (Khaled); Shabnam Textiles

(Shabnam); and Sonar Cotton Mills (Bangladesh) Ltd. (Sonar). We published a notice of initiation of the review on April 14, 1995 (60 FR 19017). The Department is now conducting a review of these respondents pursuant to section 751 of the Act.

Scope of the Review

The product covered by this administrative review is shop towels. Shop towels are absorbent industrial wiping cloths made from a loosely woven fabric. The fabric may be either 100 percent cotton or a blend of materials. Shop towels are currently classifiable under item number 6307.10.2005 and 6307.10.2015 of the Harmonized Tariff Schedules (HTS). Although HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

This review covers six manufacturers/exporters. The period of review (POR) is March 1, 1994, through February 28, 1995.

Export Price

The Department used export price (EP), as defined in section 772(a) of the Act, for Greyfab, Hashem, Khaled, Shabnam, and Sonar because the subject merchandise was sold by the manufacturer, prior to importation, to unaffiliated purchasers in the United States and the constructed export price was not otherwise warranted based on the facts of record. For each of the companies, we calculated EP based on packed C&F, CIF, or FOB prices. We made deductions, where appropriate, for forwarding charges, insurance expenses, and ocean freight in accordance with section 772(c)(2) of the Act.

Normal Value

In accordance with section 773(a)(4) of the Act, we used constructed value (CV) as normal value (NV) for all U.S. sales, because none of the respondents sold the foreign like product in the home market or in any third-country market during the POR. We calculated CV, in accordance with section 773(e) of the Act, as the sum of the cost of manufacturing (COM) of the product sold in the United States, general and administrative (SG&A) expenses, and U.S. packing expenses. The COM of the product sold in the United States is the sum of direct material, direct labor, and variable and fixed factory overhead expenses. For SG&A expenses and profit, we used an alternative method under section 773(e)(2)(B)(iii) of the Act, because we had no information that would permit us to use any of the other alternatives under section 773(e)(2). We could not calculate the ''profit cap'' prescribed by section 773(e)(2)(B)(iii) based on sales for consumption in the ''foreign country'' of merchandise that is in the same general category of products as the subject merchandise because we had no such information. Instead, we applied 773(e)(2)(B)(iii) on the basis of the facts available (section 776(b) of the Act). For each of the five responding companies, the only facts available for these preliminary results were the amounts for SG&A and profit incurred and realized by the respondent as shown in the company's financial statements.

In accordance with sections 773(a)(6)(C)(iii) and 773(a)(8) of the Act, we made a circumstance-of-sale (COS) adjustment for Khaled for sales commissions by deducting commissions that were included in the SG&A expenses and adding U.S. commissions to CV. In addition, we made a COS adjustment for Greyfab, Hashem, and Shabnam for inspection fees by deducting these fees that were included in the SG&A expenses and adding U.S. inspection fees to CV. We made no other adjustments.

Facts Available

We preliminarily determine, in accordance with section 776(a) of the Act, that the use of facts available is appropriate for Eagle Star because it did not respond to the Department's antidumping questionnaire. We sent Eagle Star a questionnaire on June 23, 1995, with a deadline of September 22, 1995, for Sections A-D of the Department's questionnaire. We did not receive a response to any section of the Department's questionnaire. We find that Eagle Star has withheld ''information that has been requested by the administering authority.'' Therefore, we must make our preliminary determination based on facts otherwise available pursuant to section 776(a)(2) of the Act.

Moreover, we find that Eagle Star has not acted to ''the best of its ability'' to comply with our requests for information. Section 776(b) authorizes the Department in such situations to use an inference adverse to the interests of the non-cooperating party in choosing the facts available. Section 776(b) authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Because information from prior segments of the proceeding constitutes secondary information, section 776(c) provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value.

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (see, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review (61 FR 6812, February 22, 1996), where the Department disregarded the highest margin in that case as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

In this case, we have used the highest rate from any prior segment of the proceeding, 42.31 percent, as adverse facts available. This rate is the highest available rate and, to the best of our knowledge, there are no circumstances that indicate that the selected margin is not appropriate as facts available.

During this review, we requested additional information in supplemental questionnaires from the five companies that responded to the Department's original questionnaire. Respondents requested extensions of the due dates, which we granted, but the due dates fell just before the statutory due date for these preliminary results, and we could not incorporate the supplemental information into our calculations. We therefore resorted to using facts available for the purpose of calculating

certain adjustments to EP. We also used facts available for certain expenses in the calculation of CV. However, we intend to take into consideration timely responses to our requests for additional information for the final results. Please refer to the respective analysis memoranda for a detailed explanation of the facts available used for the purpose of calculating dumping margins for each respondent.

Preliminary Results of Review

We preliminarily determine that the following dumping margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Eagle Star Textile Mills, Ltd.	3/1/94–2/28/95	42.31
Greyfab (Bangladesh), Ltd.	3/1/94–2/28/95	0.01
Hashem International	3/1/94–2/28/95	0.02
Khaled Textile Mills, Ltd.	3/1/94–2/28/95	0.01
Shabnam Textiles	3/1/94–2/28/95	0.03
Sonar Cotton (BD), Ltd.	3/1/94–2/28/95	0.00

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Parties who submit argument in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments within 180 days of issuance of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For duty assessment purposes, we calculated an importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of subject merchandise sold to each of the respective importers. This specific rate calculated for each importer will be used for the assessment of antidumping duties on the relevant entries of subject merchandise during the POR.

Furthermore, the following deposit rates will be effective upon publication of the final results of these administrative reviews for all shipments of shop towels from Bangladesh entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for reviewed companies will be the rates established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be the rate established in the investigation of sales at less than fair value, which is 4.60 percent.

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: April 26, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–11245 Filed 5–3–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–811]

Steel Wire Rope from the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from the petitioner, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on steel wire rope from Korea. The review covers 25 manufacturers/exporters of the subject merchandise to the United States. The review period is March 1, 1994, through February 28, 1995 (the POR).

We have preliminarily determined that sales have been made below the normal value (NV). If these preliminary results are adopted in our final results of the administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the export price (EP) and the NV.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) a statement of the issues, and (2) a brief summary of the arguments.

EFFECTIVE DATE: May 6, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas O. Barlow, Matthew Rosenbaum, or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulation published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On March 26, 1993, the Department published in the Federal Register (58 FR 16398) the antidumping duty order on steel wire rope from the Republic of Korea. On March 7, 1995, the Department published a notice of ''Opportunity to Request an Administrative Review'' (60 FR 12540) of this antidumping duty order for the period March 1, 1994, through February 28, 1995. On March 27, 1995, the petitioner, the Committee of Domestic Steel Wire Rope & Specialty Cable Manufacturers, requested an administrative review for 25 manufacturers/exporters of steel wire rope from Korea. We published a notice of initiation of the review on April 14, 1995 (60 FR 19017). The Department is now conducting this review in accordance with section 751 of the Act.

Unlocated Companies

We were unable to obtain addresses for Atlantic & Pacific, Dae Kyung Metal, Dong-Il Metal, Dong Yong Rope, Korope Co., Kwang Shin Industrial, Kwangshin Rope, and Seo Hae Industrial. In accordance with our practice with respect to companies to which we cannot send a questionnaire, we are assigning to these companies the ''All Others'' rate from the less-than-fair-value (LTFV) investigation, which is 1.51 percent. *See Sweaters Wholly or in Chief Weight of Man-Made Fiber From Hong Kong; Final Results of Antidumping Duty Administrative Review,* 59 FR 13926 (March 24, 1994).

Non-Shippers

Six companies notified us that they did not have shipments of subject merchandise during the POR, and we confirmed this with the United States Customs Service. One company, Yeon Sin Metal (Yeon Sin), did not serve its submission on interested parties, but its submission was timely submitted to the public file and provided adequate opportunity for the Department to confirm with the U.S. Customs Service that Yeon Sin did not ship steel wire rope to the United States during the POR. Because we were able to confirm that Yeon Sin had no shipments and its notification of no shipments was reasonably available to interested parties, we have accepted Yeon Sin's submission and are treating Yeon Sin as a non-shipper for this review.

Sungsan Special Steel Processing Inc. (Sungsan) submitted a letter stating that it did not produce subject merchandise during the POR and made only one shipment of subject merchandise produced by another unrelated company. We sent a letter to Sungsan requesting that it confirm that the manufacturer of this merchandise was aware that the merchandise was destined for the United States. Sungsan replied by confirming that the manufacturer of the subject merchandise which it shipped during the POR was aware that the shipment was destined for the United Sates. It also submitted documentation confirming this assertion. We were able to confirm with the U.S. Customs Service that Sungsan made no shipments of subject merchandise during the POR other than those supplied by the unrelated manufacturer, as mentioned above. Accordingly, we are treating Sungsan as a non-shipper for this review.

Scope of Review

The product covered by this review is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass-plated wire. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7312.10.9030, 7312.10.9060, and 7312.10.9090.

Excluded from this review is stainless steel wire rope, *i.e.,* ropes, cables and cordage other than stranded wire, of stainless steel, not fitted with fittings or made up into articles, which is classifiable under HTS subheading 7312.10.6000. Although HTS subheadings are provided for convenience and Customs purposes, our own written description of the scope of this review is dispositive.

Export Price

For sales to the United States, the Department used EP as defined in section 772(a) of the Act, because the subject merchandise was sold to unaffiliated U.S. purchasers prior to the date of importation and the use of constructed export price was not indicated by the facts of record.

We calculated EP based on ex-factory, f.o.b. Korea, f.o.b. customer's specific delivery point, c.i.f., c&f, or delivered prices to unrelated purchasers in, or for exportation to, the United States. We adjusted these prices for billing adjustments, where applicable. We made adjustments, where applicable, for domestic brokerage and handling, ocean freight, marine insurance, terminal handling charges, stevedoring charges, wharfage expenses, bill of lading issuing fees, export license fees, export insurance, domestic inland freight, containerization expenses and container taxes, container freight station charges, and shoring charges in accordance with section 772(c)(2)(A) of the Act. We also added duty drawback, where applicable, for Manho Rope and Wire, Ltd. (Manho) and Chun Kee Steel & Wire Rope Co., Ltd. (Chun Kee), pursuant to section 772(c)(1)(B) of the Act. We did not make any duty drawback adjustments for Chung Woo Rope Co., Ltd., Inc. (Chung Woo), Kumho Rope (Kumho), and Ssang Yong Steel Wire Co., Ltd., because they were unable to demonstrate a connection between imports for which they paid duties and exports of steel wire rope, consistent with our practice in the previous review (*see Steel Wire Rope From the Republic of Korea; Final Results of Antidumping Duty Administrative Review,* 60 FR 63499 (December 11, 1995) (*Steel Wire Rope Final*)).

No other adjustments to EP were claimed or allowed.

Normal Value

Based on a comparison of the aggregate quantity of home market and U.S. sales, and absent any information that a particular market situation in the exporting country does not permit a proper comparison, we determined that the quantity of foreign like product each respondent sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act, because each company had sales in its home market which were greater than five percent of the U. S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the prices at which the foreign like products were first sold for consumption in the exporting country.

Because the Department disregarded sales below the cost of production (COP) in the last completed review for Manho and Chun Kee (*see Steel Wire Rope Final*), we had reasonable grounds to believe or suspect that sales of the foreign product under consideration for the determination of NV in this review may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated COP investigations of sales by Manho and Chun Kee in the home market.

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus selling, general and administrative expenses (SG&A) and the cost of all expenses

incidental to placing the foreign like product in condition packed ready for shipment. We relied on the home market sales and COP information provided by Manho and Chun Kee in their questionnaire responses.

After calculating COP, we tested whether home market sales of steel wire rope were made at prices below COP within an extended period of time in substantial quantities, and whether such prices permit recovery of all costs within a reasonable period of time. We compared model-specific COP to the reported home market prices less any applicable movement charges, rebates, and direct selling expenses.

Pursuant to section 773(b)(2)(C), where less than 20 percent of respondent's sales of a given product were at prices less than COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we disregarded the below-cost sales because we determined that the below-cost sales were made within an extended period of time in ''substantial quantities'' in accordance with sections 773(b)(2) (B) and (C) of the Act, and because we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable period of time, as defined in section 773(b)(2)(D) of the Act. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product, and calculated NV based on CV, in accordance with section 773(b)(1) of the Act.

Pursuant to section 777A(d)(2) of the Act, we compared the EPs of individual transactions to the monthly weighted-average price of sales of the foreign like product. We compared EP sales to sales in the home market of identical or similar merchandise.

We based NV on the price at which the foreign like product is first sold for consumption in the exporting country, in the usual commercial quantities, in the ordinary course of trade and at the same level of trade as the EP, in accordance with section 773(a)(1)(B)(i) of the Act. We made adjustments, where appropriate, for rebates. We increased home market price by the amount of U.S. packing costs in accordance with section 773(a)(6)(A) of the Act and reduced it by the amount of home market packing costs in accordance with section 773(a)(6)(B) of the Act. We adjusted for movement expenses in accordance with section 773(a)(6)(B)(ii) of the Act. We also made adjustments, where applicable, for differences in the physical characteristics of merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 353.56, we made circumstance-of-sale (COS) adjustments to NV. We deducted home market credit expenses, inspection fees, warranty and servicing expenses and, where appropriate, added U.S. postage fees, U.S. letter of credit fees, U.S. bank charges, U.S. credit expenses, U.S. inspection fees, U.S. warranty and servicing expenses, and U.S. product liability insurance. Prices were reported net of value-added taxes (VAT) and, therefore, no adjustment for VAT was necessary.

In accordance with section 773(a)(4) of the Act, we used CV as NV for those U.S. sales for which we could not determine the NV based on home market sales pursuant to section 773(a)(1) of the Act either because there were no appropriate sales or because we disregarded below-cost sales pursuant to section 773(b) of the Act. We calculated CV, in accordance with section 773(e) of the Act, as the sum of the cost of manufacturing (COM) of the product sold in the United States, home market selling, general and administrative (SG&A) expenses, home market profit, and U.S. packing expenses. The COM of the product sold in the United States is the sum of direct material, direct labor, and variable and fixed factory overhead expenses. For home market SG&A expenses and profit, we used the actual amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country, in accordance with section 773(e)(2)(A) of the Act, unless these actual data were not available. If these actual data were not available, we used the actual amounts incurred and realized by the respondent in connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise, in accordance with section 773(e)(2)(B)(i) of the Act. In accordance with section 773(a)(8) of the Act, we made COS adjustments to CV by deducting home market direct selling expenses and adding U.S. direct selling expenses.

No other adjustments were claimed or allowed.

Use of Facts Otherwise Available

We preliminarily determine, in accordance with section 776(a) of the Act, that the use of facts available is appropriate for Boo Kook Corp., Dong-Il Steel Mfg. Co., Ltd., Hanboo Rope, Jinyang Wire Rope Inc., and Seo Jin Rope because they did not respond to our antidumping questionnaire. We find that these firms have withheld ''information that has been requested by the administering authority.'' Furthermore, we determine that, pursuant to section 776(b) of the Act, it is appropriate to make an inference adverse to the interests of these companies because they failed to cooperate by not responding to our questionnaire.

Where the Department must base the entire dumping margin for a respondent in an administrative review on the facts available because that respondent failed to cooperate, section 776(b) of the Act authorizes the Department to use an inference adverse to the interests of that respondent in choosing the facts available. Section 776(b) of the Act also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Because information from prior segments of the proceeding constitutes secondary information, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. (*See* H.R. Doc. 316, Vol. 1, 103d Cong., 2d sess. 870 (1994).)

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike for other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an

appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review* 61 FR 6812 (Feb. 22, 1996) (where the Department disregarded the highest margin as adverse BIA because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)).

In this case, we have used the highest rate from any prior segment of the proceeding, 1.51 percent, as adverse facts available. This rate is the highest available rate and, to the best of our knowledge, there are no circumstances that indicate that the selected margin is not appropriate as adverse facts available.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margins exist for the period March 1, 1994, through February 28, 1995:

Manufacturer/exporter	Margin (percent)
Atlantic & Pacific	1.51
Boo Kook Corporation	1.51
Chun Kee Steel & Wire Rope Co., Ltd	0.01
Chung Woo Rope Co., Ltd	0.04
Dae Heung Industrial Co	(1)
Dae Kyung Metal	1.51
Dong-Il Metal	1.51
Dong-Il Steel Manufacturing Co., Ltd	1.51
Dong Young	1.51
Hanboo Wire Rope, Inc	1.51
Jinyang Wire Rope, Inc	1.51
Korea Sangsa Co	(1)
Korope Co.	1.51
Kumho Rope	0.01
Kwang Shin Ind	1.51
Kwangshin Rope	1.51
Manho Rope & Wire, Ltd	0.00
Myung Jin Co	(1)
Seo Hae Ind	1.51
Seo Jin Rope	1.51
Ssang Yong Steel Wire Co., Ltd	0.06
Sung Jin	0.00
Sungsan Special Steel Processing Inc	(1)
TSK (Korea) Co., Ltd	(1)
Yeonsin Metal	2 0.18

[1] No shipments subject to this review. The firm has no individual rate from any segment of this proceeding.

[2] No shipments subject to this review. Rate is from the last relevant segment of the proceeding in which the firm had shipments/sales.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Parties who submit argument in this proceeding are requested to submit with each argument: (1) a statement of the issues, and (2) a brief summary of the arguments. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will issue a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at the hearing, within 180 days from the issuance of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For duty assessment purposes, we calculated an importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of subject merchandise sold to each of the respective importers. This specific rate calculated for each importer will be used for the assessment of antidumping duties on the relevant entries of subject merchandise during the POR.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of steel wire rope from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed companies will be the rates established in the final results of administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original LTFV investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 1.51 percent, the ''all others'' rate established in the LTFV investigation (58 FR 16398, March 26, 1993).

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

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: April 26, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–11250 Filed 5–3–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–427–078]

Sugar From France: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Finding in Part

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

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty administrative review, and intent to revoke finding in part.

SUMMARY: In response to a request made on March 12, 1996, by Boiron-Borneman, Inc. (Boiron), the Department of Commerce (the Department) is initiating a changed circumstances antidumping duty administrative review and issuing a preliminary intent to revoke in part the antidumping duty finding on sugar from France, the scope of which currently includes sugar, both raw and refined, with the exception of specialty sugars. See Sugar From Belgium, France, and the Federal Republic of Germany; Finding of Dumping, 44 FR 33878 (June 13, 1979), and Memorandum For Dick Moreland From Frank R. Brennan (June 1, 1982). Based on the fact that the Florida Sugar Marketing and Terminal Association, Inc., (the petitioner) has expressed no interest in the importation

or sale of homeopathic sugar pellets produced in France, we intend to partially revoke this finding.

EFFECTIVE DATE: May 6, 1996.

FOR FURTHER INFORMATION CONTACT: Matthew Blaskovich or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–5831/4114.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 1994, Boiron requested that the Department issue a scope ruling, finding its sugar pellets outside the scope of the finding. On February 26, 1996, the petitioner informed the Department in writing that it does not object to a changed circumstances review and has no interest in the importation or sale of homeopathic sugar pellets produced in France. On March 12, 1996, Boiron requested that the Department conduct a changed circumstance review.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (The Act), are referenced to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Scope of Review

The final antidumping finding on sugar from France covers raw and refined sugar (44 FR 8949 (February 12, 1979)). The petition, filed by the Florida Sugar Marketing & Terminal Assn., Inc., on July 3, 1978, states that ''[t]he product being imported and which is the subject of this petition, is raw and refined, semi-refined or 'off-white' sugar produced from sugar beets. Raw beet sugar and raw cane sugar are very similar chemically and nutritionally, with the result that they are interchangeable in terms of meeting refiners' needs for raw sugar.'' See Petition of Florida Sugar Marketing & Terminal Assn., Inc., July 3, 1978, at 7. Excluded from the finding are specialty sugars. Imports of the subject merchandise are currently classifiable under various subprovisions of item number 1701.91 of the Harmonized Tariff Schedule of the United States (HTS). HTS item numbers are provided for convenience and for Customs purposes. This written description remains dispositive.

The merchandise covered by this changed circumstances review includes homeopathic sugar pellets meeting the following criteria: (1) composed of 85 percent sucrose and 15 percent lactose; (2) have a polished, matte appearance, and more uniformly porous than domestic sugar cubes; (3) produced in two sizes of 2 and 3.8 mm in diameter.

The finding with regard to imports of other sugar products is not affected by this request. This changed circumstances administrative review covers homeopathic sugar pellets imported from France.

Initation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Finding in Part

Purusant to section 751(d) of the Act, the Department may partially revoke an antidumping duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances administrative review to be conducted upon receipt of a request containing information concerning changed circumstances sufficient to warrant a review.

The Department's regulations at 19 CFR 353.25(d)(2) permit the Department to conduct a changed circumstances administrative review under 19 CFR 353.22(f) based upon an affirmative statement of no interest from the petitioner in the proceeding. Section 782(h) of the Act and Section 353.25(d)(1)(i) of the Department's regulations further provide that the Department may revoke an order or revoke an order in part if it determines that the order under review is no longer of interests to interested parties. In addition, in the event that the Department concludes that expedited action is warranted, section 353.22(f)(4) of the regulations permits the Department to combine the notices of initiation and preliminary results. Therefore, in accordance with sections 751(d) and 782(h) of the Act and 19 CFR 353.25(d) and 353.22(f), based on an affirmative statement of no interest in this proceeding by petitioner, we are initiating this changed circumstances administrative review. Based on the fact that no other interested parties have objected to the position taken by petitioner that they have no interest in the order regarding homeopathic sugar pellets from France, we have determined that expedited action is warranted, and we are combining these notices of initiation and preliminary results. We have preliminarily determined tat there are changed circumstances sufficient to warrant partial revocation of the finding on sugar from France. Therefore, we are hereby notifying the public of our intent to revoke in part the antidumping duty finding as it relates to imports of homeopathic sugar pellets from France.

If final revocation in part occurs, we intend to instruct the U.S. Customs Service (Customs) to end the suspension of liquidation of homeopathic sugar pellets from France on the effective date of the final notice of partial revocation and to refund any estimated antidumping duties collected for all unliquidated entries of homeopathic sugar pellets made on or after June 1, 1994, in accordance with 19 C.F.R. 353.25(d)(5). We will also instruct Customs to refund interest for entries made on or after June 1, 1994, in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this changed circumstances review.

Public Comment

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice and any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held no later than 28 days after the date of publication of this notice, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 14 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed not later than 21 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 353.31(e) and shall be served on all interested parties on the Department's service list in accordance with 19 CFR 353.31(g). Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments.

This notice is in accordance with section 751(b)(1) of the Act and sections 353.22(f) and 353.25(d) of the Department's regulations.

Dated: April 26, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–11124 Filed 5–3–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–054 and A–588–604]

Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof From Japan and Tapered Roller Bearings, Less Than Four Inches in Outside Diameter, and Components Thereof From Japan; Antidumping Duty Administrative Reviews; Time Limits

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

ACTION: Notice of Extension of Time Limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limits of the preliminary and final results of the 1994–95 administrative reviews of the antidumping duty order (A–588–604) and finding (A–588–054) on tapered roller bearings from Japan. These reviews cover 13 manufacturers/exporters and resellers of the subject merchandise to the United States and the period October 1, 1994, through September 30, 1995.

EFFECTIVE DATE: May 6, 1996.

FOR FURTHER INFORMATION CONTACT: Valerie Turoscy or Robert James, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete these reviews within the normal time frame, the Department is extending the time limits for completion of the preliminary results until October 30, 1996, in accordance with section 751 (a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994. We will issue our final results for these reviews by February 28, 1997.

These extensions are in accordance with section 751 (a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675 (a)(3)(A)).

Dated: April 29, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary For Compliance.

[FR Doc. 96–11249 Filed 5–3–96; 8:45 am]

BILLING CODE 3510–DS–P

U.S.-Korea Committee on Business Cooperation

AGENCY: International Trade Administration, Commerce.

ACTION: Extension of time period to seek membership on U.S.-Korea Committee on Business Cooperation.

SUMMARY: On April 4, 1996, the Department of Commerce published a notice in the Federal Register (61 FR 15041 (April 4, 1996)) seeking nominations of outstanding individuals to serve on the U.S. section of the U.S.-Korea Committee on Business Cooperation (''CBC''). The purpose of the CBC is to provide a forum through which the U.S. and Korean public and private sectors can cooperate to exchange information on commercial matters and to encourage discussions on a variety of issues that impact their bilateral commerce. This notice extends the time for requests to serve on the U.S. section.

DEADLINE: The earlier notice provided that requests needed to be received by the Department of Commerce not later than May 3, 1996. This notice extends the period for the receipt of requests to serve until June 3, 1996.

ADDRESSES: Please send your requests for consideration to Susan M. Blackman, Director, Office of Korea and Southeast Asia, either by fax on (202) 482–4760 or by mail at Room 3203, U.S. Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Susan M. Blackman, Director, Office of Korea and Southeast Asia, either by fax on (202) 482–4760 or by mail at Room 3203, U.S. Department of Commerce, Washington, D.C. 20230.

Authority: Act of February 14, 1903, c. 552, as amended, 15 U.S.C. 1501 *et seq.*, 32 Stat. 825; Reorganization Plan No. 3 of 1979, 19 U.S.C. 2171 Note, 93 Stat. 1381.

Dated: April 26, 1996.

Nancy Linn Patton,

Deputy Assistant Secretary for Asia Pacific.

[FR Doc. 96–11159 Filed 5–3–96; 8:45 am]

BILLING CODE 3510–DA–P

[C–412–811]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Preliminary Results of Countervailing Duty Administrative Review

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

ACTION: Notice of preliminary results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on certain hot rolled lead and bismuth carbon steel products from the United Kingdom. We preliminarily determine the net subsidy to be 1.69 percent *ad valorem* for United Engineering Steels Limited. The net subsidies for non-reviewed companies are 20.33 percent *ad valorem* for Allied Steel and Wire Limited (ASW), and 9.76 percent *ad valorem* for all other non-reviewed companies for the period January 1, 1994 through December 31, 1994. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as indicated in the *Preliminary Results of Review* section of this notice. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 6, 1996.

FOR FURTHER INFORMATION CONTACT: Melanie Brown or Christopher Cassel, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1993, the Department published in the Federal Register (58 FR 15327) the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom. On March 7, 1995, the Department published a notice of ''Opportunity to Request an Administrative Review'' (60 FR 12540) of this countervailing duty order. We received timely requests for review from United Engineering Steels Limited, Inland Steel Bar Co. and United States/Kobe Steel Co., interested parties to this administrative review. We initiated the review, covering the period January 1, 1994 through December 31, 1994, on April 14, 1995 (60 FR 19018).

In accordance with section 355.22(a) of the Department's *Interim Regulations*, this review covers only those producers or exporters for which a review was specifically requested. *See Antidumping and Countervailing Duties: Interim Regulations; Request for Comments,* 60 FR 25130 (May 11, 1995) (*Interim Regulations*). Accordingly, this review covers United Engineering Steel Limited and British Steel plc. British Steel plc. stated that it did not produce or export the subject merchandise during the period of review (POR). Therefore,

British Steel plc. has not been assigned an individual company rate for this administrative review.

On November 2, 1995, we extended the period for completion of the preliminary and final results pursuant to section 751(a)(3) of the Tariff Act of 1930, as amended. *See Extension of the Time Limit for Certain Countervailing Duty Administrative Reviews,* 60 FR 55699. As explained in the memoranda for the record from the Assistant Secretary for Import Administration, dated November 22, 1995, and January 11, 1996, all deadlines were further extended to take into account the partial shutdowns of the Federal Government from November 15 through November 21, 1995, and December 15, 1995, through January 6, 1996. Therefore, the deadline for these preliminary results is no later than April 30, 1996, and the deadline for the final results of this review is no later than 180 days from the date on which these preliminary results are published in the Federal Register.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act. References to the *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments,* 54 FR 23366 (May 31, 1989) (*Proposed Regulations*), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *Proposed Regulations* were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. *See Advance Notice of Proposed Rulemaking and Request for Public Comments,* 60 FR 80 (January 3, 1995).

Scope of the Review

Imports covered by this review are hot-rolled bars and rods of non-alloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this review are other alloy steels (as defined by the *Harmonized Tariff Schedule of the United States* (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead or 0.1 percent or more of bismuth, tellarium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this review are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80. Although the HTSUS subheadings are provided for convenience and for Customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of Programs

I. Programs Conferring Subsidies

Allocation of Subsidies From BSC to UES

UES is a joint venture company formed in 1986 by British Steel Corporation (BSC) and Guest, Keen & Nettlefolds (GKN). In return for shares in UES, BSC contributed a major portion of its Special Steels Business and GKN contributed its Brymbo Steel Works and its forging business. BSC was wholly owned by the Government of the United Kingdom at the time the joint venture was formed; BSC was privatized in 1988 and now bears the name British Steel plc (BS plc).

In the investigation and first administrative review of this order, the Department found that BSC had received a number of subsidies prior to the 1986 sale of its Special Steels Business to UES (each of these subsidies to BSC is described in detail in Sections (1) through (4) below). *See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom,* 58 FR 6237, 6243 (January 27, 1993) (*Lead Bar*) and *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Administrative Review,* 60 FR 54841, 54842 (October 26, 1995) (*Lead Bar II*). The Department determined that the sale did not alter the benefit from these previously bestowed subsidies, and thus the portion of BSC's pre-1986 subsidies which was attributable to the Special Steels Business productive unit transferred to UES (*see Lead Bar,* 58 FR at 6240). The Department modified the *Lead Bar* allocation methodology in the subsequent *Remand Determination for Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom* which was based on the privatization methodology set out in the *General Issues Appendix* appended to the *Final Countervailing Duty Determination; Certain Steel Products from Austria,* 58 FR 37217, 37225 (July 9, 1993) (*Certain Steel*). In *Certain Steel,* the Department stated that it can no longer be assumed that the entire amount of subsidies allocated to a certain productive unit follows it when it is sold; rather, a portion of the sales price of the productive unit represents the repayment of prior subsidies.

To calculate a rate for the subsidies that were allocated from BSC to UES, we first determined the subsidies attributable to BSC's Special Steels Business by dividing the asset value of BSC's Special Steels Business by the total asset value of BSC. We then applied this ratio to the net present value, in the year of the spin-off, of the future benefit streams from all of BSC's prior subsidies allocable to the POR. The future benefit streams at the time of UES' creation reflect the Department's allocation over time of prior subsidies to BSC in accordance with the declining balance methodology (*see Proposed Regulations,* § 355.49), as well as the effect of prior spin-offs of BSC productive units.

We next estimated the portion of the purchase price which represents repayment of prior subsidies by determining the portion of BSC's net worth that was accounted for by subsidies. To do that, we divided the face value of the allocable subsidies received by BSC in each year from fiscal year 1978/79 through fiscal year 1984/85 (the year prior to the creation of UES) by BSC's net worth in the same year. We calculated a simple average of these ratios, which was then multiplied by the purchase price of the productive unit. Thus, we determined the amount of the purchase price which represents repayment of prior subsidies. This amount was subtracted from the subsidies attributed to BSC's Special Steels Business at the time of sale to arrive at the amount of subsidies allocated to UES in 1986.

Having determined the amount of BSC's previously bestowed subsidies allocable to UES with the Special Steels Business in 1986, we then determined the benefit provided to UES by these subsidies in 1994. To do this, we divided the subsidies allocated to UES by the net present value (in the year of the spin-off) of the future benefit

streams from subsidies received by BSC prior to the spin-off and allocable to the POR. The resulting percentage, which represents the portion of BSC's future benefit streams to be apportioned to UES, was then multiplied by the total benefit amount from BSC's previously bestowed subsidies that would have been allocated to BSC in 1994 absent any spin-offs or privatization. This provides the benefits to UES in 1994. We divided these benefit amounts by the company's total sales in 1994, and preliminarily determine the net subsidy to be 1.69 percent *ad valorem* for UES during 1994.

In determining the subsidies previously bestowed to BSC that were allocated to UES, we examined the following programs: equity infusions, Regional Development Grants, a National Loan Fund loan cancellation, and loans and interest rebates under ECSC Article 54.

(1) *Equity Infusions*

In every year from 1978/79 through 1985/86, BSC received equity capital from the Secretary of State for Trade and Industry pursuant to section 18(1) of the Iron and Steel Acts 1975, 1981, and 1982. According to section 18(1), the Secretary of State for the Department of Trade and Industry may ''pay to the Corporation (BSC) such funds as he sees fit.'' The Government of the United Kingdom's equity investments in BSC were made pursuant to an agreed external financing limit which was based upon medium-term financial projections. BSC's performance was monitored by the Government of the United Kingdom on an ongoing basis and requests for capital were examined on a case-by-case basis. The UK government did not receive any additional ownership, such as stock or additional rights, in return for the capital provided to BSC under section 18(1) since it already owned 100 percent of the company.

In *Lead Bar* (58 FR at 6241), the Department found BSC to be unequityworthy from 78/79 through 1985/86, and thus determined that the Government of the United Kingdom's equity infusions were inconsistent with commercial considerations. Although, prior to the formation of UES, BSC's section 18(1) equity capital was written off in two stages (£3,000 million in 1981 and £1,000 million in 1982) as part of a capital reconstruction of BSC, the Department determined that BSC benefitted from these equity infusions, notwithstanding the subsequent write-off of equity capital. Therefore, the Department countervailed the equity investments as grants given in the years the equity capital was received. No new information or evidence of changed circumstances was presented in this review to warrant a reconsideration of that finding.

Because the Department determined in *Lead Bar* that the infusions are non-recurring benefits, we have allocated the benefits over the average useful life of renewable physical assets in the steel industry (15 years) in accordance with our non-recurring grant methodology. *See Proposed Regulations*, § 355.49; *see also Certain Steel*, 58 FR at 37230.

To calculate the benefit from these grants, we have used a discount rate which includes a risk premium. *See Proposed Regulations*, § 355.44(b)(6)(iv). While uncreditworthiness was not specifically alleged or investigated during the investigation on lead bar, in the *Final Countervailing Duty Determination; Certain Steel Products from the United Kingdom*, 58 FR 37393 (July 9, 1993) (*UK Certain Steel*), the Department found that BSC was uncreditworthy from 1977/78 through 1985/86. No new information or evidence of changed circumstances was presented in this review to warrant a reconsideration of that finding.

After calculating the 1994 allocation of subsidies from BSC to UES, as described above (Allocation of Subsidies From BSC to UES), we divided the subsidies allocated to UES by the company's total sales of all products domestically produced during 1994. On this basis, we preliminarily determine the net subsidy for this program to be 1.49 percent *ad valorem* in 1994.

(2) *Regional Development Grant Program*

Regional development grants were paid to BSC under the Industry Act of 1972 and the Industrial Development Act of 1982. In order to qualify for assistance under these two Acts, an applicant had to be engaged in manufacturing and located in an assisted area. Assisted areas are older, industrial regions identified as having deep-seated, long-term problems such as high levels of unemployment, migration, slow economic growth, derelict land, and obsolete factory buildings.

Regional development grants were given for the purchase of specific assets. According to the Government of the United Kingdom, the program involved one-time grants, disbursed sometimes over several years.

BSC received regional development grants during the period between fiscal years 1978/79 and 1985/86. The Department found this program countervailable in *Lead Bar* (58 FR at 6242), because it is limited to specific regions. No new information or evidence of changed circumstances was presented in this review to warrant a reconsideration of that finding.

The Government of the United Kingdom claimed that the Regional Development Grants provided to BSC should be treated as non-countervailable green light subsidies, in accordance with section 771(5)(B) of the Act and Article 8.2(b) of the Uruguay Round Agreement on Subsidies and Countervailing Measures. To be considered a non-countervailable green light subsidy, the Department must determine that the program under which the subsidies were bestowed satisfied all of the criteria set forth in the Act. Therefore, we requested that the UK Government submit information on the Regional Development Grant program in light of these criteria. We determined that the information submitted by the UK Government it its January 23, 1996 questionnaire response was insufficient to conduct a full analysis of the program in view of the green light criteria, and, therefore, sought additional and clarifying information in our February 6, 1996, supplemental questionnaire. However, on April 16, 1996, the UK Government submitted a letter indicating that the authorities responsible for collecting the information had concluded that the limited existing documentation was inadequate to meet the Department's requests for information, and no additional material was provided. Consequently, for the purpose of this administrative review, we continue to find the Regional Development Grant program countervailable and we will not make a determination as to whether the Regional Development Grant program meets the green light criteria set forth in section 771(5)(B) of the Act.

In *Lead Bar*, we determined that, since each grant required a separate application, these grants are non-recurring. Accordingly, we have calculated the benefits from this program by allocating the benefits over the average useful life of renewable physical assets in the steel industry (15 years) in accordance with our non-recurring grant methodology. *See Certain Steel*, 58 FR at 37227; *see also Proposed Regulations*, § 355.49. Since BSC was uncreditworthy from 1978/79 through 1985/86 (as discussed under Equity Infusions), we have used a discount rate which includes a risk premium (*see Proposed Regulations*, § 355.44(b)(6)(iv)) to calculate the benefits from these grants. After calculating the 1994 allocation of

subsidies from BSC to UES, described above (Allocation of Subsidies From BSC to UES), we divided the subsidies allocated to UES by the company's total sales in 1994 and calculated the subsidy for that year. On this basis, we preliminarily determine the net subsidy for this program to be 0.05 percent *ad valorem* for UES during 1994.

(3) *National Loan Funds Loan Cancellation*

In conjunction with the 1981/1982 capital reconstruction of BSC, section 3(1) of the Iron and Steel Act of 1981 extinguished certain National Loans Fund (NLF) loans, as well as the accrued interest thereon, at the end of BSC's 1980/81 fiscal year. Because this loan cancellation was provided specifically to BSC, the Department determined in *Lead Bar* (58 FR at 6242) that it provided a countervailable benefit. No new information or evidence of changed circumstances was presented in this review to warrant a reconsideration of that finding.

We calculated the benefit for this review using our standard methodology for non-recurring grants. We allocated the benefits from this loan cancellation over the average useful life of renewable physical assets in the steel industry (15 years) (*see Proposed Regulations,* § 355.49; *see also Certain Steel,* 58 FR at 37230); because BSC was found to be uncreditworthy in 1981/82 (as discussed under Equity Infusions), we have used a discount rate which includes a risk premium (*see Proposed Regulations,* § 355.44(b)(6)(iv)). After calculating the 1994 allocation of subsidies from BSC to UES, described above (Allocation of Subsidies From BSC to UES), we divided the benefit allocated to UES by the company's total sales in 1994 and calculated the *ad valorem* subsidy for that year. On this basis, we preliminarily determine the net subsidy for this program to be 0.16 percent *ad valorem* for UES during 1994.

(4) *European Coal and Steel Community (ECSC) Article 54 Loans/Interest Rebates*

The European Coal and Steel Community's (ECSC) Article 54 Industrial Investment loans are direct, long-term loans from the Commission of the European Communities to be used by the iron and steel industry for purchasing new equipment or financing modernization. The purpose of the program is to facilitate the borrowing process for companies in the ECSC, some of which may not otherwise be able to obtain loans. In *UK Certain Steel,* the Department determined that this program is limited to the iron and steel industry, and thus is countervailable to the extent that it provides loans on terms inconsistent with commercial considerations. No new information or evidence of changed circumstances was presented in this review to warrant a reconsideration of that finding.

In addition, interest rebates on Article 54 loans were granted to steel companies during the restructuring and modernization of the industry in the early 1980s. To qualify for the rebates, companies had to meet certain criteria, such as being in the process of reducing their steel production capacity or of implementing improvements in processing that would yield energy savings and improved efficiency.

The interest rebates, which were limited to a maximum of 3 percent of the total investment over a period of five years, were funded from the ECSC operational budget. While levies imposed on ECSC steel companies have provided the revenues for the operational budget since 1985, contributions by Member States supplemented the budget before that time. For this reason, the Department determined in *UK Certain Steel* that a portion of those interest rebates was countervailable. Following the same methodology in this review to determine the countervailable portion, we calculated the ratio of the contributions by Member States to the ECSC's total available funds for each year in which the rebates were given, and then multiplied this ratio by the rebate amount.

BSC received one Article 54 loan in fiscal year 76/77 and two Article 54 loans in fiscal year 77/78, all of which were provided in U.S. dollars and are still outstanding. BSC also received interest rebates during the first five years of the 76/77 loan. Because BSC qualified for the interest rebate at the time the loan was granted, we considered the rebate to constitute a reduction in the interest rate charged rather than a grant.

We considered the loan made to BSC during its creditworthy period (*i.e.*, in BSC's 76/77 fiscal year) separately from the two loans made during its uncreditworthy period (*i.e.*, in BSC's 77/78 fiscal year). For the Article 54 loan provided when BSC was creditworthy, we used as our benchmark the average U.S. long-term commercial rate for 1977. We used this rate because we did not have information on U.S. dollar loans borrowed in the United Kingdom in 1977. To calculate the benefit from this loan we employed our long-term loan methodology. *See Proposed Regulations,* § 355.49(c)(1). We then compared the amount of interest that would have been paid on the benchmark loan to the interest paid by BSC (factoring in the interest rebate as discussed above) and found that BSC's interest payments were higher than those it would have made on the benchmark loan. Therefore, we find that this particular loan was provided on terms consistent with commercial considerations.

For the loans provided when BSC was uncreditworthy, we used as our benchmark the highest U.S. lending rate available for long-term fixed rate loans at the time the loan was granted, plus a risk premium equal to 12 percent of the U.S. prime rate for 1977. *See, Final Affirmative Countervailing Duty Determination: New Steel Rail, Except Light Rail, from Canada,* 54 FR 31991 (August 3, 1989); *see also, Proposed Regulations,* § 355.44(b)(6)(iv). Again, we used a U.S. interest rate because we did not have information on U.S. dollar loans borrowed in the United Kingdom in 1977. We then compared the cost of the benchmark financing to the cost of the financing that BSC received under this program and found that the two Article 54 loans to BSC during its uncreditworthy period were provided on terms inconsistent with commercial considerations.

To calculate the benefit from these loans we used our long-term loan methodology. *See Proposed Regulations,* § 355.49(c)(1). Using this methodology and a benchmark discount rate which includes a risk premium *(see Proposed Regulations,* § 355.44(b)(6)(iv)), we calculated the grant equivalent and allocated it over the life of the loans. Then we calculated the 1994 allocation of subsidies from BSC to UES, as described above (Allocation of Subsidies From BSC to UES). We then divided the subsidies allocated to UES by the company's total sales in that year to calculate the *ad valorem* subsidy. On this basis, we preliminarily determine the net subsidy for this program to be 0.0003 percent *ad valorem* for UES during 1994.

II. Programs Preliminarily Determined To Be Not Used

We examined the following programs and preliminarily find that the producers and/or exporters of the subject merchandise subject to this review did not apply for or receive benefits under these programs during the POR:

(A) New Community Instrument Loans
(B) ECSC Article 54 Loan Guarantees
(C) NLF Loans
(D) ECSC Conversion Loans

(E) European Regional Development Fund Aid
(F) Article 56 Rebates
(G) Regional Selective Assistance
(H) ECSC Article 56(b)(2) Redeployment Aid
(I) BRITE/EuRAM II
(J) Inner Urban Areas Act of 1978

Preliminary Results of Review

In accordance with section 355.22(c)(4)(ii) of the Department's *Interim Regulations,* we have calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1994 through December 31, 1994, we preliminarily determine the net subsidy for United Engineering Steels Limited to be 1.69 percent ad valorem. If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to assess countervailing duties for United Engineering Steels Limited at 1.69 percent *ad valorem*. The Department also intends to instruct the U.S. Customs Service to collect a cash deposit of 1.69 percent of the f.o.b. invoice price on all shipments of the subject merchandise from United Engineering Steels Limited, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

The URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies. The procedures for countervailing duty cases are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. Requests for administrative reviews must now specify the companies to be reviewed. *See* § 355.22(a) of the *Interim Regulations.* The requested review will normally cover only those companies specifically named. Pursuant to 19 C.F.R. § 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States,* 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States,* 822 F.Supp. 766 (CIT 1993) (interpreting 19 C.F.R. 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 C.F.R. 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review. We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company.

Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are 20.33 percent *ad valorem* for ASW and 9.76 percent *ad valorem* for all other non-reviewed companies, which are the rates calculated in the most recently completed administrative proceeding. *See Lead Bar II,* 60 FR at 54841. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1994 through December 31, 1994, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Public Comment

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 C.F.R. 355.38.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 C.F.R. 355.38, are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: April 29, 1996.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 96–11244 Filed 5–3–96; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

[Docket No. 950519137–6100–02]

RIN 0693–XX08

Manufacturing Extension Partnership Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of availability of funds.

SUMMARY: The National Institute of Standards and Technology (NIST) invites proposals from qualified organizations for funding projects to provide manufacturing extension services to small- and medium-sized manufacturers in the United States. NIST will provide assistance for the creation and support of manufacturing extension centers in accordance with the provisions of Section 5121 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), codified in 15 U.S.C. 278k, and final rule 15 CFR part 290 published September 17, 1990 and amendment published May 2, 1994.

Manufacturing extension centers must be affiliated with a U.S.-based not-for-profit institution or organization. Support may be provided for a period not to exceed six years. Support beyond the initial award is dependent upon satisfactory performance and the availability of funds. Applicants are required to provide 50% or more of the operating costs for providing these manufacturing extension services in year 1 through 3 and an increasing percentage in years 4 through 6.

DATES: Proposals from qualified applicants must be received at the address below by 5 p.m. EDST, July 8, 1996. Selection of awards will be made in September 1996.

ADDRESSES: Applicants must submit one signed original and six (6) copies of their proposal along with a Standard Form 424, 424–A, and 424–B (Rev 4–92), Form CD–511 and Form SF–LLL to the Manufacturing Extension Partnership, Building 301, Room C121, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001. Plainly mark on the outside of the package that it contains a manufacturing extension center proposal.

FOR FURTHER INFORMATION CONTACT:

For information regarding this announcement, contact Roger Kilmer of the Manufacturing Extension Partnership by calling (301) 975–5020; or by mailing information requests to the Manufacturing Extension Partnership, Building 301, Room C121, National Institute of Standards and Technology, Gaithersburg, Maryland, 20899–0001. Information packets, which include background materials on MEP, existing centers and the necessary application forms, should be requested via a one page fax sent to (301) 963–6556. Please include name, organization, mailing address, telephone number, and fax number on this request.

SUPPLEMENTARY INFORMATION:

Catalog of Federal Domestic Assistance

The catalog number for the award of Manufacturing Technology Centers funds in the Catalog of Federal Domestic Assistance is 11.611.

Funding Availability

It is anticipated that approximately $20,000,000 will be available to support manufacturing extension centers under their program. The funding level for individual awards is not prescribed. The funding requested by the applicant should be directly related to the level of activity of the center, which is a function of the number of manufacturers in the designated service region, and to the availability of applicant-provided cash and in-kind contributions to be used as cost share.

Award Period

The projects awarded under this program will have an initial performance period of one year. These projects are renewable on an annual basis up to a maximum of six (6) years subject to the review requirements described in 15 CFR 290.8. Renewal of these projects shall be at the sole discretion of NIST and shall be based upon satisfactory performance, priority of the need for the service, existing legislative authority, and availability of funds.

Additional Requirements

(a) *Federal policies and procedures.* Recipients and sub-recipients are subject to all Federal laws and Federal and NIST policies, regulations, and procedures applicable to Federal financial assistance awards. Applicants under this program are not subject to the requirements of Executive Order 12372, ''Intergovernmental Review of Federal Programs''.

(b) *No obligation for future funding.* If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or to extend the period of performance is a the total discretion of the Department of Commerce.

(c) *Indirect costs.* The total dollar amount of the indirect cost proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

(d) *Pre-award activities* If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Applicants are also hereby notified that notwithstanding any written or verbal assurance that they may have received, there is no obligation on the part of NIST to cover pre-award costs.

(e) *Delinquent Federal debts.* No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(1) The delinquent account is paid in full;

(2) A negotiated repayment schedule is established and at least one payment is received; or

(3) Other arrangements satisfactory to NIST are made.

(f) *Past performance.* Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(g) *Name check review.* All non-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

(h) *Primary applicant certification.* All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided.

(1) *Nonprocurement debarment and suspension.* Prospective participants (as defined at 15 CFR part 26, Section 105) are subject to 15 CFR part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

(2) *Drug-free workplace.* Recipients (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

(3) *Anti-lobbying.* Persons (as defined at 15 CFR part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(4) *Anti-lobbying disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR part 28, appendix B.

(i) *Lower tier certifications.* Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to NIST. SF–LLL submitted by any tier recipient or subrecipient should be submitted to NIST in accordance with the instructions contained in the award document.

(j) *False statements.* A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(k) *American-made equipment and products.* Applicants are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with the funding provided under this program in accordance with Congressional intent.

(l) *North American Free Trade Agreement Patent Notification Procedures.* Pursuant to Executive Order 12889, the Department of Commerce (DoC) is required to notify the owner of

any valid patent covering technology whenever the DoC or its financial assistance recipient, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. Applicants selected for awards under this program are required to comply with this executive order.

(m) *Paperwork Reduction Act.* This notice contains collection of information requirements subject to the Paperwork Reduction Act (PRA) which have been approved by the Office of Management and Budget (OMB Control Number 0693–0005, 0348–0043 and 0348–0044). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Dated: April 30, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–11247 Filed 5–3–96; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council; Open Meeting

AGENCY: Sanctuaries and Reserves division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council Open Meeting.

SUMMARY: NOAA will conduct a meeting of the Sancturay Advisory Council (SAC) for the Hawaiian Islands Humpback Whale National Marine Sanctuary on May 8, 1996, in Honolulu, Hawaii. The SAC was established to advise NOAA's Sanctuaries and Reserves Division regarding the development and management of the Hawaiian Islands Humpback Whale National Marine Sanctuary. The Advisory Council was convened under the National Marine Sanctuaries Act.

TIME AND PLACE: Wednesday, May 8, 1996, from 9:30 AM until 4:00 PM. The meeting will be held at the Honolulu International Airport—Interisland Terminal, Ohia Room #1, 7th floor.

AGENDA: General issues related to the Hawaiian Islands Humpback Whale National Marine Sanctuary are expected to be discussed, including discussions concerning the comments received on the Sanctuary's Draft Environmental Impact Statement and Management Plan, the SAC Charter, an overview of current Sanctuary programs, and the formation of issue-specific working groups.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Allen tom (808) 879–2818 or Brady Phillips at (301) 713–3141, ext. 169.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: May 1, 1996.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 96–11234 Filed 5–3–96; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 042296C]

Marine Mammals and Endangered Species; Permits

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

ACTION: Receipt of modification request for scientific research permit 837 (P771 #67); request for comments.

SUMMARY: Notice is hereby given that the National Marine Mammal Laboratory has applied in due form for a modification to permit 837 for purposes of scientific research.

DATES: Written comments must be received on or before June 5, 1996.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, NMFS,P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221); and

Director, Northwest Region, NMFS, 7600 Point Way NE, BIN C15700, Building 1, Seattle WA 98115–07009 (206/526–6150).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

SUPPLEMENTARY INFORMATION: The subject modification is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*), and fur seal regulations at 50 CFR part 215.

The modification requests authorization to increase numbers of animals incidentally harassed during censusing and other activities; increase numbers of allowable captures on Bogoslof Island; conduct activities using Time-Depth Recorders; and increase numbers of animals receiving Time-Wet Recorders. Concurrent with the publication of this notice in the Federal Register, the National Marine Fisheries Service is forwarding copies of this modification to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 22, 1996.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–11235 Filed 5–3–96; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

MidAmerica Commodity Exchange Proposed Futures Contract in the Mexican Peso

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The MidAmerica Commodity Exchange (MidAm or Exchange) has applied for designation as a contract market in Mexican peso futures. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the

Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before June 5, 1996.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, DC 20581. Reference should be made to the MidAmerica Commodity Exchange Mexican peso futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, DC 20581, telephone 202–418–5277.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5097.

Other materials submitted by the MidAm in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 C.F.R. Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 C.F.R. 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 C.F.R. 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the MidAm, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on April 30, 1996.

Blake Imel,

Acting Director.

[FR Doc. 96–11135 Filed 5–3–96; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Draft Environmental Impact Statement/ Environmental Impact Report (DEIS/ DEIR) for Proposed Combined-Forces Training Activities, New Equipment Utilization, and Range Modernization Program at Camp Roberts Army National Guard Training Site, CA

AGENCY: Department of the Army, DOD.

ACTION: Notice of Availability.

SUMMARY: The purpose of this project is to maximize training opportunities for military units that use Camp Roberts. Military units need to be able to maintain a high level of training and state of readiness to support national defense and state missions in times of natural disaster, civil unrest,and other emergencies. Adequate training opportunities, with up-to-date equipment, must be available to allow them to train for their assigned missions.

This DEIS/DEIR analyzes the proposed action, two alternatives, and the no-action alternative. The proposed action consists of three components: combined-forces training with two brigades of personnel and associated equipment, new equipment utilization, and a range modernization program.

The combined-forces training component would consist of increasing the intensity of training from a typical maximum of approximately 5,300 soldiers to approximately 10,600 soldiers during an annual training period at Camp Roberts. Four new types of equipment would be introduced at Camp Roberts as part of the proposed action: the M1 Abrams series of tanks would replace the M60 series tanks, Bradley Fighting Vehicles would replace the M113 series armored personnel carriers, the Multiple-Launch Rocket System would replace all but two of the M110 8-inch howitzers, and the AH–64 series Apache helicopters would replace the Cobra helicopters. The range modernization program component would be composed of both upgrading existing ranges and constructing new ranges.

In addition to the proposed action, the DEIS/DEIR evaluates three other alternatives: No-Action, New Equipment Utilization and Range Modernization Program, and the Peak Training Use of Camp Roberts/Fort Hunter Liggett.

There will be a 45-day public review and comment period for the DEIS/DEIR. A public meeting will be held on the DEIS/DEIR not less than 15 days after the Notice of Availability is published. The meetings will be held in San Luis Obsipo and Paso Robles. Several resources tables will be staffed so that citizens will have the opportunity to voice their opinions regarding the DEIS/ DEIR and have their questions answered. After all of the comments have been compiled and reviewed, responses to all relevant environmental issues that have been raised will be prepared. These responses to comments and/or any new information will be incorporated into the DEIS/DEIR to constitute the Final EIS/EIR.

ADDRESSES: Copies of the DEIS/DEIR will be mailed to individuals who participated in the public scoping process. Copies will also be sent to federal, state, regional, and local agencies; interested organizations and agencies; and public libraries. Individuals not currently on the mailing list may obtain a copy at request.

FOR FURTHER INFORMATION CONTACT: LTC William R. Parsonage, EIS/EIR Project Officer, Camp Roberts Army National Guard Training Site, Camp Roberts, CA, 93451–5000, 805/238–8207.

Dated: April 29, 1996.

Raymond J. Fatz,

Acting Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health) OASA (IL&E).

[FR Doc. 96–11175 Filed 5–3–96; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Air Station, South Weymouth, MA

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Air Station, South Weymouth, Massachusetts and the surplus property that is located at that base closure site.

FOR FURTHER INFORMATION CONTACT: For further general information, contact John J. Kane, Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or Marian E. DiGiamarino, Special Assistant for Real Estate, Base Closure Team, Northern Division, Naval Facilities Engineering Command, Lester, PA 19113–2090, telephone (610) 595–0762. For more detailed information regarding particular properties identified in this Notice (i.e. acreage,

floorplan, sanitary facilities, exact street address, etc.), contact Helen McCabe, Realty Specialist, Base Closure Team, Northern Division, Naval Facilities Engineering Command, Lester, PA 19113–2090, telephone (610) 595–0549.

SUPPLEMENTARY INFORMATION: In 1995, the Naval Air Station, South Weymouth, Massachusetts, was designated for realignment pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, on 28 September 1995, the land and facilities at this installation were declared excess to the Department of Navy and made available for use by other federal public agencies. Approximately 62 acres of improved property together with all of Nomans Island, an auxiliary site located near Martha's Vineyard, Massachusetts, have been requested by other federal agencies. That property is not included in this notice.

Notice of Surplus Property: Pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the redevelopment authority for and surplus property at the Naval Air Station, South Weymouth, Massachusetts, is published in the Federal Register.

Redevelopment Authority: The redevelopment authority for the Naval Air Station, South Weymouth, Massachusetts, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the Naval Air Station Planning Committee, chaired by Mary S. McElroy. A cross section of community interests is represented on the Planning Committee. For further information contact Mr. James Clarke, Director of Planning, Naval Air Station Planning Committee, Weymouth Town Hall, South Weymouth, Massachusetts 02189, telephone (617) 335–2000 facsimile (617) 682–2189.

Surplus Property Descriptions: The following is a listing of the land and facilities at the Naval Air Station, South Weymouth, Massachusetts that are declared surplus to the federal government.

Land: Approximately 1,382 acres of improved and unimproved fee simple land plus flight clearance easements at the U.S. Naval Air Station, South Weymouth, Massachusetts. In general, all areas will be available upon the closure of the Air Station, anticipated for September 1997.

Buildings: The following is a summary of the facilities located on the above described land which will be available when the Air Station closes in September 1997, unless otherwise indicated. Property numbers are available on request.

Main Station:

Administrative/training facilities (16 structures);
Comments: Approx. 74,242 square feet;
—Aircraft fuel storage;
Comments: Approx. 600 million gallons;
—Airfield pavement;
Comments: Approx. 7,062 square yards;
—Ammo storage facilities (6 structures);
Comments: Approx. 5,212 square feet.
—Communication facilities (3 structures);
Comments: Approx. 2,092 square feet;
—Community facilities (24 structures);
Comments: Approx. 70,487 square feet;
—Covered storage facilities (6 structures);
Comments: Approx. 47,224 square feet;
—Dental/Dispensary clinics (3 structures);
Comments: Approx. 12,657 square feet;
—Electric distribution facilities;
—Fire protection—water;
Comments: Approx. 2,835 square feet;
—Fuel storage facilities (5 structures);
Comments: Approx. 945,000 gallons;
—Heat plant facility;
Comments: Approx. 5,543 square feet;
—Maintenance aircraft facilities (11 structures);
Comments: Approx. 148,629 square feet;
—Maintenance automobile facilities (3 structures);
Comments: Approx. 10,948 square feet;
—Maintenance electric communication facility;
Comments: Approx. 3,675 square feet;
—Operation facilities (4 structures);
Comments: Approx. 11,154 square feet;
—Public works facilities (11 structures);
Comments: Approx. 26,004 square feet;
—Ship operation facilities (4 structures);
Comments: Approx. 65,639 square feet;
—Miscellaneous facilities (railroad trackage, fencing, retaining wall, etc.)

Expressions of Interest: Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Air Warfare Station, South Weymouth, Massachusetts shall submit to said redevelopment authority Naval Air Station Planning Committee a notice of interest, of such governments, representatives and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraph 7(C) of said Section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in South Weymouth, Massachusetts, the date by which expressions of interest must be submitted.

Dated: April 19, 1996.

M.A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–11190 Filed 5–3–96; 8:45 am]

BILLING CODE 3810–FF–P

Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Undersea Warfare Center Detachment, New London, CT

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Undersea Warfare Center Detachment, New London, Connecticut, and the surplus property that is located at that base closure site.

ADDRESSES: For further general information, contact John J. Kane, Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or Marian E. DiGiamarino, Special Assistant for Real Estate, Base Closure Team, Northern Division, Naval Facilities Engineering Command, Lester, PA 19113–2090, telephone (610) 595–0762. For more detailed information regarding particular properties identified in this Notice (i.e., acreage, floorplan, sanitary facilities, exact street address, etc.), contact Helen McCabe, Realty Specialist, Base Closure Team, Northern Division, Naval Facilities Engineering

Command, Lester, PA 19113–2090, telephone (610) 595–0549.

SUPPLEMENTARY INFORMATION: In 1995, the Naval Undersea Warfare Center Detachment, New London, Connecticut, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, on 28 September 1995, the land and facilities at this installation (except for those directed by the Commission to be retained by the Coast Guard) were declared excess to the Department of the Navy and available for use by other federal agencies. No interest has been expressed.

Notice of Surplus Property: Pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the redevelopment authority for and the surplus property at the Naval Undersea Warfare Center Detachment, New London, Connecticut, is published in the Federal Register.

Redevelopment Authority: The redevelopment authority for the Naval Undersea Warfare Center Detachment, New London, Connecticut for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the Naval Undersea Warfare Center Redevelopment Authority (NUWC RDA), chaired by Mr. Anthony R. Basilica. A cross section of community interests is represented on the Redevelopment Authority. For further information contact Mr. Richard M. Brown, City Manager, Naval Undersea Warfare Center, Redevelopment Authority (NUWC RDA), 181 State Street, New London, CT 06320, telephone (203) 447–5201, facsimile (203) 447–7971.

Surplus Property Descriptions: The following is a listing of the land and facilities at the Naval Undersea Warfare Center Detachment, New London, Connecticut that are surplus to the federal government.

Land: Approximately 25 acres of improved and unimproved fee simple land at the Naval Undersea Warfare Center Detachment, New London, Connecticut. In general, all areas will be available upon the closure of the Undersea Warfare Center, anticipated for March 1997.

Buildings: The following is a summary of the facilities located on the above described land which will be available when the Air Warfare Center closes in March 1997, unless otherwise indicated. Property numbers are available on request.

—Administrative/facilities (14 structures);
Comments: Approx. 53,539 square feet;
—Boat and diver changing facility (2 structures);
Comments: Approx. 1,786 square feet;
—Communication facilities (2 structures);
Comments: Approx. 3,496 square feet;
—Community facilities (10 structures);
Comments: Approx. 83,943 square feet;
—Covered storage facilities (4 structures);
Comments: Approx. 18,902 square feet;
—Electronic communication equipment (19 structures);
Comments: Approx. 240,610 square feet;
—Family housing dwellings (4 structures);
Comments: Approx. 21,270 square feet;
—Heat plant (2 structures);
Comments: Approx. 5,284 square feet;
—Maintenance garages (2 structures);
Comments: Approx. 3,958 square feet;
—Miscellaneous lab facilities (8 structures);
Comments: Approx. 30,159 square feet;
—Operations fuel storage facilities (3 structures);
Comments: Approx. 63,000 gallons;
—Photo facility;
Comments: Approx. 5,431 square feet;
—Piers (3 structures);
Comments: Approx. 4,991 square feet;
—Printing plant;
Comments: Approx. 2,791 square feet;
—Public Works maintenance facilities (8 structures);
Comments: Approx. 15,447 square feet;
—Science labs facility (18 structures);
Comments: Approx. 79,436 square feet;
—Ship/Marine facility (5 structures);
Comments: Approx. 76,233 square feet;
—Tech services (2 structures);
Comments: Approx. 48,059 square feet;
—Training facilities (3 structures);
Comments: Approx. 9,541 square feet;
—Weapon systems labs;
Comments: Approx. 4,710 square feet.

Expressions of Interest: Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Undersea Warfare Center Detachment, New London, Connecticut, shall submit to said redevelopment authority Naval Undersea Warfare Center Redevelopment Authority (NUWC RDA) a notice of interest, of such governments, representatives and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraph 7(C) of said Section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in the New London, Connecticut area the date by which expressions of interest must be submitted.

Dated: April 19, 1996.

M.A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–11191 Filed 5–3–96; 8:45 am]

BILLING CODE 3810–FF–P

Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Housing Area, Quincy, Massachusetts (Offsite component of Naval Air Station, South Weymouth, MA)

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Housing Area, Quincy, Massachusetts, and the surplus property that is located at that base closure site.

FOR FURTHER INFORMATION CONTACT: For further general information, contact John J. Kane, Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or Marian E. DiGiamarino, Special Assistant for Real Estate, Base Closure Team, Northern Division, Naval Facilities Engineering Command, Lester, PA 19113–2090, telephone (610) 595–0762. For more detailed information regarding particular properties identified in this Notice (i.e. acreage, floorplan, sanitary facilities, exact street address, etc.), contact Helen Mc Cabe, Realty Specialist, Base Closure Team, Northern Division, Naval Facilities Engineering Command, Lester, PA 19113–2090, telephone (610) 595–0549.

SUPPLEMENTARY INFORMATION: In 1995, the Naval Housing Area, Quincy, Massachusetts, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, on September 28, 1995, the land and facilities at this installation were declared excess to the Department of Defense, and made available for use by other federal public agencies. No interest has been expressed.

Notice of Surplus Property: Pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the redevelopment authority for and surplus property at the Naval Housing Area, Quincy, Massachusetts, is published in the Federal Register.

Redevelopment Authority: The redevelopment authority for the Naval Housing Area, Quincy, Massachusetts, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the City of Quincy, chaired by Mayor James A. Sheets. For further information contact Bernice Mader, Administrative Assistant, City of Quincy, City Hall, 1305 Hancock Street, Quincy, Massachusetts 02169, telephone (617) 376–1990 facsimile (617) 376–1995.

Surplus Property Descriptions: The following is a listing of the land and facilities at the Naval Housing Area, Quincy, Massachusetts which consists of two housing sites known as Squantum Gardens and Naval Terrace, that are surplus to the federal government.

Land: Approximately 28 acres of improved and unimproved fee simple land at the Naval Housing Area, Quincy, Massachusetts. In general, all areas will be available upon the closure of the Naval Housing Area, anticipated for September 1997.

Buildings: The following is a summary of the facilities located on the above described land which will be available when the Naval Housing closes in September 1997, unless otherwise indicated. Property numbers are available on request:

—Administrative facility;
Comments: Approx. 1,703 square feet,
—Family housing dwellings (36 structures);
Comments: Approx: 135,962 square feet;
— Family housing garage/storage facilities (17 structures);
Comments: Approx. 20,720 square feet;
—Heat plant facilities (9 structures);
Comments: Approx. 3,226 square feet;
—Public Works facility;
Comments: Approx. 7,039 square feet.

Expressions of Interest: Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Housing Area, Quincy, Massachusetts, shall submit to said redevelopment authority City of Quincy a notice of interest, of such governments, representatives and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant paragraph 7(C) of said Section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Quincy, Massachusetts the date by which expressions of interest must be submitted.

Dated: April 19, 1996.

M.A. Waters,

LCDR, JAGC, USN Federal Register Liaison Officer.

[FR Doc. 96–11192 Filed 5–3–96; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; State Student Incentive Grant Program

AGENCY: Department of Education.

ACTION: Notice of the closing date for receipt of state applications for fiscal year 1996.

SUMMARY: The Secretary of Education (Secretary) gives notice of the closing date for receipt of State applications for fiscal year 1996 funds under the State Student Incentive Grant (SSIG) Program. This program, through matching formula grants to States for student awards, provides grants to students with substantial financial need. The SSIG Program supports Goals 2000, the President's strategy for moving the Nation toward the National Education Goals, by enhancing opportunities for postsecondary education. The National Education Goals call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education.

A State that desires to receive SSIG funds for this fiscal year must have an agreement with the Secretary as provided under section 1203(a) of the Higher Education Act of 1965, as amended (HEA). The State must submit an application through the State agency that administered its SSIG Program as of July 1, 1985, unless the Governor has subsequently designated, and the Secretary has approved, a different State agency.

The Secretary is authorized to accept applications from the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and the Republic of Palau. Authority for this program is contained in sections 415A through 415E of the HEA. (20 U.S.C. 1070c–1070c–4)

Closing Date for Transmittal of Applications: An application for fiscal year 1996 SSIG funds must be mailed or hand-delivered by June 6, 1996.

Application Form: The required application form for receiving SSIG funds will be mailed to officials of the appropriate State agency in each State at least 30 days before the closing date. Applications must be prepared and submitted in accordance with the HEA and the program regulations cited in this notice. The Secretary strongly urges that applicants only submit information that is requested.

Applications Delivered by Mail: An application sent by mail must be addressed to: Mr. Fred Sellers, Chief, Pell and State Grant Section, Room 3045, ROB–3, U.S. Department of Education, Student Financial Assistance Programs, 600 Independence Avenue, S.W., Washington, D.C. 20202–5447.

The Secretary will accept the following proof of mailing: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service. The Department of Education encourages applicants to use certified or at least first-class mail.

A late applicant cannot be assured that its application will be considered for fiscal year 1996 funding.

Applications Delivered by Hand: An application that is hand-delivered must be taken to Mr. Fred Sellers, U.S. Department of Education, Student Financial Assistance Programs, 7th and D Streets, S.W., Room 3045, General Service Administration Regional Office Building #3, Washington, D.C. Hand-delivered applications will be accepted between 8:00 a.m. and 4:30 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: Section 415C(a) of the HEA requires that an annual application be submitted for a State to receive SSIG funds. In preparing the application, each State agency should be guided by the table of allotments provided in the application package.

State allotments are determined according to the statutorily mandated formula under section 415B of the HEA and are not negotiable. A State may also request its share of reallotment, in addition to its basic allotment, which is contingent upon the availability of such additional funds.

In fiscal year 1995, 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Island (Palau), and the Commonwealth of the Northern Mariana Islands received funds under the SSIG Program.

Applicable Regulations: The following regulations are applicable to the SSIG Program:

(1) The SSIG Program regulations in 34 CFR part 692.

(2) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 75.60 through 75.62 (Ineligibility of Certain Individuals to Receive Assistance), part 76 (State-Administered Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement), and Governmentwide Requirements for Drug-Free Workplace (Grants)), and part 86 (Drug-Free Schools and Campuses).

(3) The regulations in 34 CFR part 604 that implement section 1203 of the HEA (Federal-State Relationship Agreements).

(4) The Student Assistance General Provisions in 34 CFR part 668.

FOR FURTHER INFORMATION: For further information contact Mr. Greg Gerrans, Pell and State Grant Section, U.S. Department of Education, Student Financial Assistance Programs, Washington, D.C. 20202–5447; telephone (202) 708–4607. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. (20 U.S.C. 1070c–1070c–4)

(Catalog of Federal Domestic Assistance Number 84.069, State Student Incentive Grant Program)

Dated: May 1, 1996.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 96–11222 Filed 5–03–96; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5468–6]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Public Review of a Notification of Intent to Certify Equipment

AGENCY: Environmental Protection Agency

ACTION: Notice of agency receipt of a notification of intent to certify equipment and initiation of 45 day public review and comment period.

SUMMARY: Engelhard Corporation (Engelhard) has submitted to the Agency a notification of intent to certify urban bus retrofit/rebuild equipment pursuant to 40 CFR part 85, subpart O. The notification describes equipment consisting of an engine rebuild kit (fuel injectors, cylinder kits, camshafts, blower, turbocharger, cylinder heads, by-pass valve, exhaust manifold and associated gaskets) along with a catalytic converter muffler that replaces the existing muffler in the exhaust stream. Several of the engine rebuild components will have a proprietary coating applied to the surface. Engelhard has proposed a three-tiered supply approach, discussed in more detail below, intended to provide flexibility to transit operators using this equipment. Engelhard intends that this equipment be certified to the 0.1 grams per brake-horsepower-hour (g/bhp-hr) particulate matter standard for 1979–1990 model year Detroit Diesel Corporation (DDC) 6V92TA engines having mechanical unit injectors (MUI). Pursuant to § 85.1407(a)(7), today's Federal Register notice summarizes the notification, announces that the notification is available for public review and comment, and initiates a 45 day period during which comments can be submitted. The Agency will review this notification of intent to certify, as well any comments it receives, to determine whether the equipment described in the notification of intent to certify should be certified. If certified, the equipment can be used by urban bus operators to reduce the particulate matter of urban bus engines.

The notification of intent to certify, as well as other materials specifically relevant to it, are contained in Category XIII of Public Docket A–93–42, entitled ''Certification of Urban Bus Retrofit/Rebuild Equipment''. This docket is located at the address listed below.

Today's notice initiates a 45-day period during which the Agency will accept written comments relevant to whether or not the equipment included in this notification of intent to certify should be certified. Comments should be provided in writing to the addresses below.

DATES: Comments must be submitted on or before June 20, 1996.

ADDRESSES: Submit separate copies of comments to each of the two following addresses:

1. U.S. Environmental Protection Agency, Public Docket A–93–42 (Category XIII-A), Room M–1500, 401 M Street S.W., Washington, DC 20460.

2. Tom Stricker, Engine Compliance Programs Group, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 ''M'' Street SW, Washington, DC 20460.

The Engelhard notification of intent to certify, as well as other materials specifically relevant to it, are contained in the public docket indicated above. Docket items may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by the Agency for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Tom Stricker, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460. Telephone: (202) 233–9322.

SUPPLEMENTARY INFORMATION:

I. Background

On April 21, 1993, EPA published final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The retrofit/rebuild program is intended to reduce the ambient levels of particulate matter

(PM) in urban areas and is limited to 1993 and earlier model year (MY) urban buses operating in metropolitan areas with 1980 populations of 750,000 or more, whose engines are rebuilt or replaced after January 1, 1995. Operators of the affected buses are required to choose between two compliance options: Option 1 sets particulate matter emissions requirements for each urban bus engine in an operator's fleet which is rebuilt or replaced; Option 2 is a fleet averaging program that sets out a specific annual target level for average PM emissions from urban buses in an operator's fleet.

A key aspect of the program is the certification of retrofit/rebuild equipment. To meet either of the two compliance options, operators of the affected buses must use equipment which has been certified by EPA. Emissions requirements under either of the two options depend on the availability of retrofit/rebuild equipment certified for each engine model. To be used for Option 1, equipment must be certified as meeting a 0.10 g/bhp-hr PM standard or as achieving a 25 percent reduction in PM. Equipment used for Option 2 must be certified as providing some level of PM reduction that would in turn be claimed by urban bus operators when calculating their average fleet PM levels attained under the program.

Under Option 1, additional information regarding cost must be submitted in the application for certification, in order for certification of that equipment to initiate (or trigger) program requirements for a particular engine model. In order for the equipment to serve as a trigger, the certifier must guarantee that the equipment will be offered to affected operators for $7,940 or less at the 0.10 g/bhp-hr PM level, or for $2,000 or less for the 25 percent or greater reduction in PM. Both of the above amounts are based on 1992 dollars and include life cycle costs incremental to the cost of a standard rebuild.

II. Application for Certification

Engelhard Corporation has applied for certification of equipment applicable to 1979–1990 model year Detroit Diesel Corporation (DDC) 6V92TA diesel engines with mechanical unit injectors (MUI). The application states that the candidate equipment achieves a particulate matter (PM) level of 0.1 g/bhp-hr. Life cycle costs for operators are stated to be less than $7,940 (in 1992 dollars) for all affected operators. The use of the equipment by transit operators to meet program requirements is discussed further below.

The equipment being certified consists of an engine rebuild kit in conjunction with a catalytic converter muffler that takes the place of the original muffler installed in the engine exhaust system. The engine rebuild kit consists of two separate parts kits. One kit contains new components including cylinder kits, blower by-pass valve, air inlet hose, and gaskets. The other parts kit contains remanufactured components including fuel injectors, camshafts, blower assembly, turbocharger, exhaust manifold(s), turbocharger Y-inlet pipe, and cylinder head assemblies. (The cylinder head(s), valve faces, piston crowns, and exhaust manifold(s), and turbo Y-inlet have a proprietary coating applied to the surface). One of each type of kit is required, depending on the horsepower rating of the engine, direction of engine rotation, and camshaft mounting gear type. A total of twelve combinations of these two kits are available. The specific catalytic converter part to be used depends on the type of coach as well as the type of engine.

Engelhard provides a table listing the various catalytic converter kits available for different engine/coach combinations. The Engelhard catalytic converter used in this equipment package is not the same as the Engelhard catalytic converter previously certified by EPA (60 FR 28402, May 31, 1995), therefore, transit operators cannot use the previously certified converter in place of the new converter in this kit.

Engelhard states its intention that certification of this equipment trigger program requirements for the 0.1 g/bhp-hr PM standard for applicable engines, and provides life cycle cost information. The life cycle cost of the Engelhard kit, in 1992 dollars, is stated as $13,502, which includes $10,686 for the engine rebuild kit, $2,600 for the catalytic converter muffler, and $216 for installation of the catalytic converter muffler. Engelhard indicates that the life cycle cost ($13,502) is $7,940 incremental to the cost of a ''standard'' rebuild, which is listed as $5,562, and therefore meets the life cycle cost requirements. Engelhard uses $5,562 as the cost a ''standard'' rebuild because this figure is the purchase price (in 1992 dollars) quoted by Detroit Diesel Corporation for its upgrade rebuild kit (see 61 FR 8275, March 4, 1996). The labor to rebuild an engine will be the same for a ''standard'' rebuild and the candidate kit, with the exception of the additional labor required for installation of the catalytic converter muffler. Engelhard states in its notification that there is no fuel economy penalty associated with the candidate equipment. EPA's preliminary review of the test data of the notification, however, suggests a fuel economy penalty of roughly four (4) percent with the candidate equipment, and, if a 4 percent fuel economy penalty exists, it would increase life cycle costs about $1,140 (in 1992 dollars). At this point, EPA has not determined whether a fuel economy penalty exists, and requests comments concerning this issue. EPA will use information gathered through public comment and from the certifier to resolve this issue. If Engelhard cannot show that its equipment will be offered to all operators for less than $7,940 (in 1992 dollars), incremental to the cost of a standard rebuild, then certification may proceed but it would not trigger the 0.1 g/bhp-hr PM standard.

Engelhard presents data from testing a 1987 model year configuration Detroit Diesel 6V92TA MUI engine with the Engelhard upgrade kit and converter kit installed, documenting a PM emissions level of 0.08 g/bhp-hr. This test also showed that emissions of hydrocarbon (HC), carbon monoxide (CO), oxides of nitrogen (NO_X), and smoke were within the applicable standards. Engelhard also presents comparative baseline test data from a standard 1979 rebuilt engine configuration. These data document PM emissions of 0.33 g/bhp-hr in the standard rebuild configuration. Although the PM level of the standard 1979 engine rebuild is somewhat low (0.33 g/bhp-hr), EPA believes that engines emitting in the 0.50 g/bhp-hr range would still meet the 0.1 g/bhp-hr PM standard with the Engelhard kit installed because installation of the kit results in the replacement of all emissions related parts with a specific set of parts, the combination of which results in a documented PM level of 0.08 g/bhp-hr. In other words, the emission level of the original engine, prior to installation of the Engelhard kit, may be irrelevant since all emission related parts are replaced upon installation of the kit. EPA requests comments on whether or not all engines for which certification is intended will meet the 0.1 g/bhp-hr PM standard.

In a March 25, 1996 addendum to its notification of intent to certify, Engelhard requested approval of this kit under three different supply scenarios described below. The purpose of this proposal was to provide increased flexibility to operators and to allow transits to make use of existing transit personnel to the maximum extent possible.

Under supply option 1, Engelhard would provide the coated engine components, the catalytic converter muffler, and the cylinder kits. The

remaining parts (fuel injectors, camshafts, blower and turbocharger) could be purchased or supplied separately as long as such parts were Engelhard specified OEM components or their equivalent.

Under supply option 2, Engelhard would supply all components in the kit as described in the notification of intent to certify.

Under supply option 3, Engelhard would supply the coated engine components, the catalytic converter muffler, and the new engine components (cylinder kits, blower by-pass valve, air inlet hose, and gaskets). The remanufactured components (fuel injectors, camshafts, blower assembly and turbocharger) would be required to be remanufactured by Engelhard Certified Remanufacturers. Such ''certified remanufacturers'' would consist of transits or other third parties designated by Engelhard as capable of remanufacturing these components within the tolerances prescribed by Engelhard with proper quality control. Engelhard proposed to provide training to those interested in becoming a certified Engelhard remanufacturer.

EPA expects to evaluate each of these supply options and their impact on life cycle costs. Also, EPA will evaluate whether any of these options will compromise the ability of the Engelhard kit to achieve 0.1 g/bhp-hr PM standard in the field.

If EPA approves the request for certification of this equipment, urban bus operators who choose to comply with compliance Option 1 of this regulation will be required to use this equipment or other equipment certified to the 0.1 g/bhp-hr standard beginning six months after certification approval, when applicable engines are rebuilt or replaced.

If EPA approves Engelhard's certification request, urban bus operators who chose to comply under compliance Option 2 of this regulation may also use the Engelhard equipment. If certification is approved by EPA, the emission levels of the Engelhard rebuild kit will be used to modify the Option 2 post-rebuild levels in July 1996.

The date of this notice initiates a 45 day period during which EPA will accept written comments relevant to whether or not the equipment described in this application should be certified. Interested parties are encouraged to review this application, and provide comments related to whether or not the equipment described in it should be certified pursuant to the urban bus retrofit/rebuild program. Comments should be provided in writing to the address listed under the Addresses section of this notice.

The Agency will review this notification of intent to certify, along with comments received from the interested parties, and attempt to resolve or clarify issues as necessary. During the review process, EPA may add additional documents to the docket as a result of the review process. These documents will also be available for public review and comment within the 45 day period.

Dated: April 26, 1996.

Richard Wilson,

Acting Assistant Administrator for Office of Air and Radiation.

[FR Doc. 96–11077 Filed 5–3–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2129]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

May 1, 1996.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed May 21, 1996. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems. (IB Docket No. 95–41)

Number of Petitions Filed: 4

Subject: Preemption of Local Zoning Regulation of Satellite Earth Stations (IB Docket No. 95–59)

Number of Petitions Filed: 8

Subject: Streamlining Broadcast EEO Rules and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines (MM Docket No. 96–16)

Number of Petitions Filed: 1

Subject: Implementation of Section 302 of the Telecommunications Act of 1996; Open Video Systems (CS Docket No. 96–46)

Telephone Company-Cable; Television Cross-Ownership Rules, Sections 63–54—63–58 (CC Docket No. 87–266 (Terminated))

Number of Petitions Filed: 1

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–11176 Filed 5–3–96; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 3:33 p.m. on Tuesday, April 30, 1996, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Joseph H. Neely (Appointive), concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: May 1, 1996.

Federal Deposit Insurance Corporation

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 96–11296 Filed 5–2–96; 2:09 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the

following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 202–002744–087
Title: West Coast of South America Agreement
Parties:
A.P. Moller-Maersk Line
Compania Chilena de Navigacion Interoceania, S.A.
Compania Sud Americana de Vapores, S.A.
Crowley American Transport, Inc.
Sea-Land Service, Inc.
South Pacific Shipping Company Ltd.
Synopsis: The proposed amendment revises Article 14.(c)(1) to provide that service contracts shall be for a maximum term of one year unless otherwise unanimously agreed to by the Members. It also restates the Agreement.

Agreement No.: 202–010689–059
Title: Transpacific Westbound Rate Agreement
Parties:
American President Lines, Ltd.
Hapag-Lloyd Aktiengesellschaft
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Nedlloyd Lijnen B.V.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha Ltd.
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Synopsis: The proposed amendment modifies the Agreement to state that all voting provisions now in the various sections of the Agreement will be combined into a single concise statement and to clarify ambiguities that reflects existing practice and interpretation of the Agreement. In addition, it deletes the Voting groups in the Agreement.

Agreement No.: 224–200985
Title: Port of Galveston/Wallenius Lines North America, Inc. Incentive Operating Agreement
Parties:
Port of Galveston (''Port'')
Wallenius Lines North America, Inc. (''Wallenius'')
Synopsis: The proposed Agreement authorizes the Port to refund to Wallenius 6½ percent of the applicable Port tariff dockage fees, provided Wallenius makes a minimum of 36 port calls during the calendar year.

Dated: April 30, 1996.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–11147 Filed 5–3–96; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Export Center, 55 Farwell Street #1, Newton, MA 02160–1006, Nada Saad, Sole Proprietor
Kasi Renganathan, 4385 Pinewalk Drive, Alpharetta, GA 30202–7048, Sole Proprietor
Seko Ocean Forwarding, Inc., 790 Busse Road, Elk Grove Village, IL 60007, Officers: Peter Baker, Chief Executive Officer, Daniel Para, President

Dated: April 30, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–11153 Filed 5–3–96; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 123]

National Institute for Occupational Safety and Health; Grants for Education Programs in Occupational Safety and Health; Notice of Availability of Funds for Fiscal Year 1997

Introduction

The Centers for Disease Control and Prevention (CDC) announces that applications are being accepted for fiscal year (FY) 1997 training grants in occupational safety and health. The purpose of these grants is to provide an adequate supply of qualified personnel to carry out the purposes of the Occupational Safety and Health Act. This announcement includes an expanded emphasis on research and research training and an emphasis on establishing new and innovative training technologies for both Educational Resource Centers (ERCs) and Training Project Grants (TPGs).

CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of ''Healthy People 2000,'' see the section ''WHERE TO OBTAIN ADDITIONAL INFORMATION.'')

Authority

This program is authorized under section 21(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670(a)). Regulations applicable to this program are in 42 CFR Part 86, ''Grants for Education Programs in Occupational Safety and Health.''

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Any public or private educational or training agency or institution that has demonstrated competency in the occupational safety and health field and is located in a State, the District of Columbia, or U.S. Territory is eligible to apply for a training grant.

Availability of Funds and Types of Training Awards and Applicant Characteristics

CDC expects approximately $11,500,000 to be available in FY 1997.

A. Approximately $10,400,000 of the total funds available will be utilized as follows:

1. To award approximately eight non-competing continuation and six competing continuation or new Occupational Safety and ERC training

grants totaling approximately $8,200,000 and ranging from approximately $400,000 to $800,000 with the average award being approximately $600,000. An Occupational Safety and Health Educational Resource Center shall be an identifiable organizational unit within the sponsoring organization and shall consist of the following characteristics:

a. Cooperative arrangements with a medical school or teaching hospital (with an established program in preventive or occupational medicine); with a school of nursing or its equivalent; with a school of public health or its equivalent; or with a school of engineering or its equivalent. It is expected that other schools or departments with relevant disciplines and resources shall be represented and shall contribute as appropriate to the conduct of the total program, e.g., epidemiology, toxicology, biostatistics, environmental health, law, business administration, and education. Specific mechanisms to implement the cooperative arrangements between departments, schools/colleges, universities, etc., shall be demonstrated in order to assure that the intended multidisciplinary training and education will be engendered.

b. A Center Director who possesses a demonstrated capacity for sustained productivity and leadership in occupational health and safety education and training. The Director shall oversee the general operation of the Center Program and shall, to the extent possible, directly participate in training activities. Provisions shall be made to employ a Deputy Director who shall be responsible for managing the daily administrative duties of the Center and to increase the Center Director's availability to ERC staff and to the public. At least one full-time equivalent effort shall be demonstrated between the two positions.

c. Program Directors who are full-time faculty and professional staff representing various disciplines and qualifications relevant to occupational safety and health who are capable of planning, establishing, and carrying out or administering training projects undertaken by the Center. Each academic program, as well as the continuing education and outreach program shall have a Program Director.

d. Faculty and staff with demonstrated training and research expertise, appropriate facilities and ongoing training and research activities in occupational safety and health areas.

e. A program for conducting education and training in four core disciplines: occupational physicians, occupational health nurses, industrial hygienists, and occupational safety personnel. There shall be a minimum of five full-time students in each of the core programs, with a goal of a minimum of 30 full-time students (total in all of core programs together). Although it is desirable for a Center to have the full range of core programs, a Center with a minimum of three components of which two are in the core disciplines is eligible for support providing it is demonstrated that students will be exposed to the principles and issues of all four core disciplines. In order to maximize the unique strengths and capabilities of institutions, consideration will be given to the development of new and innovative academic programs that are relevant to the occupational safety and health field, e.g., ergonomics, industrial toxicology, occupational injury prevention, and occupational epidemiology. Centers must also document that the program covers an occupational safety and health discipline in critical need or meets a specific regional workforce need. Each core program curriculum shall include courses from non-core categories as well as appropriate clinical rotations and field experiences with public health and safety agencies and with labor-management health and safety groups. Where possible, field experience shall involve students representing other disciplines in a manner similar to that used in team surveys and other team approaches.

f. A specific plan describing how trainees will be exposed to the principles of all other occupational safety and health core and allied disciplines. Consortium Centers generally have geographic, policy and other barriers to achieving this Center characteristic and, therefore, must give special, if not innovative, attention to thoroughly describing the approach for fulfilling the multidisciplinary interaction between students.

g. Demonstrated impact of the ERC on the curriculum taught by relevant medical specialties, including family practice, internal medicine, dermatology, orthopedics, pathology, radiology, neurology, perinatal medicine, psychiatry, etc., and on the curriculum of undergraduate, graduate and continuing education of primary core disciplines as well as relevant medical specialities and the curriculum of other schools such as engineering, business, and law.

h. An outreach program to interact with and help other institutions or agencies located within the region. Programs shall be designed to address regional needs and implement innovative strategies for meeting those needs. Partnerships and collaborative relationships shall be encouraged between ERCs and Training Project Grants. Programs to address the under-representation of minorities among occupational safety and health professionals shall be encouraged. Examples of outreach activities might include activities such as: Interaction with other colleges and schools within the ERC and with other universities or institutions in the region to integrate occupational safety and health principles and concepts within existing curricula (e.g., Colleges of Business Administration, Engineering, Architecture, Law, and Arts and Sciences); exchange of occupational safety and health faculty among regional educational institutions; providing curriculum materials and consultation for curriculum/course development in other institutions; use of a visiting faculty program to involve labor and management leaders; cooperative and collaborative arrangements with professional societies, scientific associations, and boards of accreditation, certification, or licensure; and presentation of awareness seminars to undergraduate and secondary educational institutions (e.g., high school science fairs and career days) as well as to labor, management and community associations.

i. A specific plan for preparing, distributing and conducting courses, seminars and workshops to provide short-term and continuing education training courses for physicians, nurses, industrial hygienists, safety engineers and other occupational safety and health professionals, paraprofessionals and technicians, including personnel from labor-management health and safety committees, in the geographical region in which the Center is located. The goal shall be that the training be made available to a minimum of 400 trainees per year representing all of the above categories of personnel, on an approximate proportional basis with emphasis given to providing occupational safety and health training to physicians in family practice, as well as industrial practice, industrial nurses, and safety engineers. Priority shall be given to establishing new and innovative training technologies, including distance learning programs and to short-term programs designed to prepare a cadre of practitioners in occupational safety and health. Where appropriate, it shall be professionally acceptable that Continuing Education Units (as approved by appropriate

professional associations) may be awarded. These courses should be structured so that higher educational institutions, public health and safety agencies, professional societies or other appropriate agencies can utilize them to provide training at the local level to occupational health and safety personnel working in the workplace. Further, the Center shall conduct periodic training needs assessments, shall develop a specific plan to meet these needs, and shall have demonstrated capability for implementing such training directly and through other institutions or agencies in the region. The Center should establish and maintain cooperative efforts with labor unions, government agencies, and industry trade associations, where appropriate, thus serving as a regional resource for addressing the problems of occupational safety and health that are faced by State and local governments, labor and management.

j. A Board of Advisors or Consultants representing the user and affected population, including representatives of labor, industry, government agencies, academic institutions and professional associations, shall be established by the Center. The Board shall meet regularly to advise a Center Executive Committee and to provide periodic evaluation of Center activities. The Executive Committee shall be composed of the Center Director and Deputy Director, academic Program Directors, the Directors for Continuing Education and Outreach and others whom the Center Director may appoint to assist in governing the internal affairs of the Center.

k. A plan to incorporate research training into all aspects of training and in research institutions, as documented by on-going funded research and faculty publications, a defined research training plan for training doctoral-level researchers in the occupational safety and health field. The plan will include how the Center intends to strengthen existing research training efforts, how it will integrate research training activities into the curriculum, field and clinical experiences, how it will expand these research activities to have an impact on other primarily clinically-oriented disciplines, such as nursing and medicine, and how it will build on and utilize existing research opportunities in the institution. Each ERC is required to identify or develop a minimum of one, preferably more, areas of research focus related to work environment problems. Consideration shall be given to the CDC/NIOSH priority research areas identified in the National Occupational Health Research Agenda (NORA). (This publication may be obtained from NIOSH). In addition to the research and research training components, the plan will also include such items as specific strategies for obtaining student and faculty funding, plans for renovating or acquiring facilities and equipment, if appropriate, and a plan for developing research-oriented faculty.

l. Evidence in obtaining support from other sources, including other Federal grants, support from States and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

2. Approximately $250,000 of the available funds as specified in A.1. will be awarded to ERCs to support the development of specialized educational programs in agricultural safety and health within the existing core disciplines of industrial hygiene, occupational medicine, occupational health nursing, and occupational safety. Program support is available for faculty and staff salaries, trainee costs, and other costs to educate professionals in agricultural safety and health.

3. To award approximately thirty-one, non-competing continuation and eight competing continuation or new long-term training project grants (TPG) totaling $2,200,000 and ranging from approximately $10,000 to $500,000, with the average award being $56,000, to support academic programs in the core disciplines (i.e., industrial hygiene, occupational health nursing, occupational/industrial medicine, and occupational safety and ergonomics) and relevant components (e.g., occupational injury prevention, industrial toxicology, ergonomics). The awards are normally for training programs of 1 academic year. They are intended to augment the scope, enrollment, and quality of training programs rather than to replace funds already available for current operations. They must also document that the program covers an occupational safety and health discipline in critical need or meets a specific regional workforce need. The types of training currently eligible for support are:

a. Graduate training for practice, teaching, and research careers in occupational safety and health. Priority will be given to programs producing graduates in areas of greatest occupational safety and health need. Strong consideration will be given to the establishment of innovative training technologies including distance learning programs.

b. Undergraduate and other pre-baccalaureate training providing trainees with capabilities for positions in occupational safety and health professions.

c. Special technical or other programs for long-term training of occupational safety and health technicians or specialists.

d. Special programs for development of occupational safety and health training curricula and educational materials, including mechanisms for effectiveness testing and implementation.

Awards will be made for a 1- to 5-year project period with an annual budget period. Funding estimates may vary and are subject to change. Non-competing continuation awards within the approved project periods will be made on the basis of satisfactory progress and the availability of funds.

B. Approximately $1,100,000 of the total funds available will be awarded to ERCs to support the development and presentation of continuing education and short courses and academic curricula for trainees and professionals engaged in the management of hazardous substances. These funds are provided to NIOSH/CDC through an Interagency Agreement with the National Institute of Environmental Health Sciences as authorized by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). The hazardous substance training (HST) funds are being used to supplement previous hazardous substance continuing education grant support provided to the ERCs in FY 1984 and 1985 under the authority of Title III of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 as amended by SARA for the ERC continuing education program. The hazardous substance academic training (HSAT) funds are being used to supplement continuing industrial hygiene core program support to develop and offer academic curricula in the hazardous substance field primarily for industrial hygiene trainees. Program support is available for faculty and staff salaries, trainee costs, and other costs to provide training and education for occupational safety and health and other professional personnel engaged in the evaluation, management, and handling of hazardous substances. The policies regarding project periods also apply to these activities.

Purpose

The objective of this grant program is to award funds to eligible institutions or agencies to assist in providing an adequate supply of qualified professional and para-professional

occupational safety and health personnel to carry out the purposes of the Occupational Safety and Health Act.

Review and Evaluation Criteria

In reviewing ERC grant applications, consideration will be given to:

1. Plans to satisfy the regional needs for training in the areas outlined by the application, including projected enrollment, recruitment and current workforce populations. Special consideration should be given to the development of programs addressing the under-representation of minorities among occupational safety and health professionals. Indicators of regional need should include measures utilized by the Center such as previous record of training and placement of graduates. The need for supporting students in allied disciplines must be specifically justified in terms of user community requirements.

2. Extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve *Characteristics of an Educational Resource Center.* (See A.1.a.–l.)

3. Extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve certificate or degree, course descriptions, course sequence, additional related courses open to occupational safety and health students, time devoted to lecture, laboratory and field experience, and the nature of specific field and clinical experiences including their relationships with didactic programs in the educational process.

4. Academic training including the number of full-time and part-time students and graduates for each core program, the placement of graduates, employment history, and their current location by type of institution (academic, industry, labor, etc.). Previous continuing education training in each discipline and outreach activity and assistance to groups within the ERC region.

5. Methods in use or proposed methods for evaluating the effectiveness of training and outreach including the use of placement services and feedback mechanisms from graduates as well as employers, innovative strategies for meeting regional needs, critiques from continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

6. Competence, experience and training of the Center Director, the Deputy Center Director, the Program Directors and other professional staff in relation to the type and scope of training and education involved.

7. Institutional commitment to Center goals.

8. Academic and physical environment in which the training will be conducted, including access to appropriate occupational settings.

9. Appropriateness of the budget required to support each academic component of the ERC program, including a separate budget for the academic staff's time and effort in continuing education and outreach.

10. Evidence of the integration of research experience into the curriculum, field and clinical experiences. In institutions seeking funds for doctoral and post-doctoral level research training (physician training), evidence of a plan describing the research and research training the Center proposes. This shall include goals, elements of the program, research faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

12. Evidence of success in attaining outside support to supplement the ERC grant funds including other Federal grants, support from States and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

13. Evidence of a strategy to evaluate the impact that the ERC and its programs have had on the DHHS Region. Examples could include a continuing education needs assessment, a workforce needs survey, consultation and research programs provided to address regional occupational safety and health problems, the impact on primary care practice and training, a program graduate data base to track the contributions of graduates to the occupational safety and health field, and the cost effectiveness of the program.

In reviewing long-term TPG applications, consideration will be given to:

1. Need for training in the program area outlined by the application. This should include documentation of a plan for student recruitment, projected enrollment, job opportunities, regional/national need both in quality and quantity, and for programs addressing the under-representation of minorities in the profession of occupational safety and health.

2. Potential contribution of the project toward meeting the needs for graduate or specialized training in occupational safety and health.

3. Curriculum content and design which should include formalized program objectives, minimal course content to achieve certificate or degree, course sequence, related courses open to students, time devoted to lecture, laboratory and field experience, nature and the interrelationship of these educational approaches. There should also be evidence of integration of research experience into the curriculum, field and clinical experiences.

4. Previous records of training in this or related areas, including placement of graduates.

5. Methods proposed to evaluate effectiveness of the training.

6. Degree of institutional commitment: Is grant support necessary for program initiation or continuation? Will support gradually be assumed? Is there related instruction that will go on with or without the grant?

7. Adequacy of facilities (classrooms, laboratories, library services, books, and journal holdings relevant to the program, and access to appropriate occupational settings).

8. Competence, experience, training, time commitment to the program and availability of faculty to advise students, faculty/student ratio, and teaching loads of the program director and teaching faculty in relation to the type and scope of training involved. The program director must be a full-time faculty member.

9. Admission Requirements: Student selection standards and procedures, student performance standards and student counseling services.

10. Advisory Committee: Membership, industries and labor groups represented; how often they meet; who they advise, role in designing curriculum and establishing program need.

11. Evidence of a strategy to evaluate the impact that the program has had on the region. Examples could include a workforce needs survey, consultation and research programs provided to address regional occupational safety and health problems, a program graduate data base to track the contributions of graduates to the occupational safety and health field, and the cost effectiveness of the program.

Funding Allocation Criteria

For Educational Resource Center grants, the following criteria will be considered in determining funding allocations.

1. Academic Core Programs

a. Budget to support programs primarily for personnel and other personnel-related costs. Advanced

(doctoral and post-doctoral) and specialty (master's) programs will be considered.

b. Budget to support programs based on program quality and need. Factors considered include faculty commitment/breadth, faculty reputation/strength, distinctive program contribution, and technical merit.

c. Budget to support students based on the program level and the number of students supported.

d. Budget to support research training programs to establish a research base within core disciplines and for the training of researchers in occupational safety and health.

2. Center Administration

Budget to support Center administration to assure: coordination and promotion of academic programs; interdisciplinary interaction; meeting of regional workforce needs; and evaluation of impact.

3. Continuing Education/Outreach Program

Budget to support outreach and continuing education activities to prepare, distribute, and conduct short courses, seminars, and workshops.

4. Hazardous Substance Training Programs

Budget to support the development and presentation of continuing education courses for professionals engaged in the management of hazardous substances.

5. Hazardous Substance Academic Training Programs

Budget to support the development and presentation of specialized academic programs in hazardous substance management.

6. Agricultural Safety and Health Academic Programs

Budget to support the development and presentation of specialized academic programs and continuing education courses in agricultural safety and health.

For Long-Term Training Project grants, the following factors will be considered in determining funding allocations.

Academic Core Programs

a. Budget to support programs primarily for personnel and other personnel-related costs. Advanced (doctoral and post-doctoral), specialty (master's), and baccalaureate/associate programs will be considered.

b. Budget to support programs based on program quality and need. Factors considered include faculty commitment/breadth, faculty reputation/strength, regional workforce needs, evaluation of impact, distinctive program contribution, interdisciplinary interaction, and technical merit.

c. Budget to support students based on the program level and the number of students supported.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.263.

Application Submission and Deadline

Applications should be clearly identified as an application for an Occupational Safety and Health Long-Term Training Project Grant or ERC Training Grant. The submission schedule is as follows:

New, Competing Continuation and Supplemental Receipt Date: July 1, 1996.

An original and two copies of new, competing continuation and supplemental applications (Form CDC 2.145A ERC or TPG) should be submitted to: Ron Van Duyne (Attn: Georgia Jang), Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, Mailstop E–13, Atlanta, GA 30305.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Non-Competing Continuation Receipt Date: November 15, 1996.

An original and two copies of non-competing continuation applications (Form CDC 2.145B ERC or TPG) should be submitted to: Ron Van Duyne (Attn: Georgia Jang), Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, Mailstop E–13, Atlanta, GA 30305.

Where to Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked your name, address, and phone number and will need to refer to Announcement 123. In addition, this announcement is also available through the CDC Home Page on the Internet. The address for the CDC Home Page is http://www.cdc.gov. A complete program description and information on application procedures are contained in the application package.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Georgia L. Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6630, or by Internet, glj2@opspgo1.em.cdc.gov. Programmatic technical assistance may be obtained from John T. Talty, Principal Engineer, Office of Extramural Coordination and Special Projects, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 4676 Columbia Parkway, Mailstop C–10, Cincinnati, OH 45226, telephone (513) 533–8241, or by Internet, jtt2@niood2.em.cdc.gov.

Please refer to Announcement Number 123 when requesting information and submitting an application.

There may be delays in mail delivery as well as difficulty in reaching the CDC Atlanta offices during the 1996 Summer Olympics (July 19–August 4). Therefore, CDC suggests the following for more timely responses to any questions: use Internet/email, following all instructions in this announcement, and leave messages on the contact person's voice mail.

Potential applicants may obtain a copy of Healthy People 2000 (Full

Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001-00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: April 26, 1996.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–11144 Filed 5–03–96; 8:45 am]

BILLING CODE 4163–19–P

[Announcement Number 616]

Sexually Transmitted Diseases Faculty Expansion Program

Introduction

The Centers for Disease Control and Prevention (CDC) announces the expected availability of fiscal year (FY) 1996 funds for a cooperative agreement program to provide resources to support faculty positions specializing in sexually transmitted diseases (STD) to schools of medicine in the United States. The Department of Health and Human Services (DHHS) is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of STD and HIV Infection. (For ordering a copy of ''Healthy People 2000,'' see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION**.)

Authority

This program is authorized under section 318 of the Public Health Service Act, 42 U.S.C. 247c–1, as amended. Regulations governing Grants for STD Research Demonstrations and Public and Professional Education are codified in Part 51b, Subparts A and F of Title 42, Code of Federal Regulations.

Smoke-Free Workplace

The CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Competition for these funds is limited to clinical departments of schools of medicine in the United States where CDC is not currently funding STD Prevention/Training Centers or where the National Institutes of Health (NIH) is not currently funding Sexually Transmitted Diseases Cooperative Research Centers or STD institutional training programs. The rationale for this limited competition is that those areas where STD Prevention/Training Centers and NIH STD Cooperative Research Centers or STD Institutional Training Programs are located already have expertise in STDs and have established training and collaborations similar to those described as goals of this announcement.

Availability of Funds

Approximately $650,000 is expected to be available in FY 1996 to fund approximately five awards for a 12-month budget period within a 5-year project period. It is expected that the awards will begin on or about September 30, 1996. It is estimated that the average award (including direct and indirect cost) for the first year will be $130,000, ranging between $120,000 and $140,000. Continuation awards within the project period will depend on satisfactory progress and the availability of funds. It is anticipated that the awards for the second year will be level with those of the first year.

In the third year, CDC will provide 50 percent of the original award, and the remainder, summing to at least the same level as the original award, will be provided as a guaranteed salary shared by the medical school and the collaborating health department. In the fourth and fifth years, CDC will contribute a maximum of 25 percent of the original award, with the remainder of the funds documented through a collaborating effort between the medical school and the health department (which cannot be reduced below the level of the original award). Computation of the salary should include cost-of-living and merit increases, if applicable. In-kind contributions, such as space and equipment may not be considered in the total program costs. Total program costs for the purposes of determining contributions consist of the five items listed under the **USE OF FUNDS** section.

Use of Funds

Cooperative agreement funds may be used to support:

- The salary and benefits of a faculty member,
- Travel to three project-related meetings during budget period,
- Supplies necessary for professional training activities,
- Not more than $15,000 annually to support relevant research by faculty member,
- Indirect cost.

Funds may not be used to lease space; to provide diagnostic and treatment facilities or services; or to pay other expenses normally supported by the applicant or the collaborating health department. Funds may not be used for renovation of facilities. Federal funds may not be used to replace training support. The purpose of this cooperative agreement is to enable the school of medicine to provide STD training and education by establishing a faculty position in sexually transmitted diseases in a clinical department and not to supplant existing sources of funding for a current faculty member.

Any materials developed in whole or in part with CDC funds shall be subject to a nonexclusive, irrevocable, royalty-free license to the government to reproduce, translate, publish, or otherwise use and authorize others to use for government purposes.

Purpose

The general purpose of this cooperative agreement is:

1. To enable the awardee institutions to provide training and education in STDs by developing a faculty position dedicated to the area of sexually transmitted diseases in schools of medicine where such clinical and research expertise does not currently exist.
2. To support the development of linkages between health departments and medical schools in the area of STD prevention through jointly appointed staff who strengthen the scientific basis of programmatic activities by undertaking research, clinical care, and teaching responsibilities.

Specifically, the recipient supported under the STD Faculty Expansion Program will be expected to establish a faculty member to provide to medical students, house staff, and fellows:

1. Preclinical, didactic instruction in the pathogenesis, natural history, epidemiology, and management of STDs sufficient to produce a sound educational basis for subsequent clinical instruction, and
2. Clinical instruction in the prevention, diagnosis and treatment of STDs.

The recipient will establish a faculty member who will also be expected to:

1. Care for STD patients at one or more clinics supported by the State or local health department, and
2. Develop STD research programs, preferably in collaboration with local or state health departments.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities listed under B. (CDC Activities), as listed below:

A. Recipient Activities

1. Establish a full-time faculty position in STDs in a clinical department (e.g., internal medicine, pediatrics, obstetrics and gynecology, preventive or community medicine, or family practice) with the authority and responsibility to carry out the requirements of this program.

2. Maintain an agreement with a State or local health department and the medical school for a jointly appointed position that would include the potential for use of the health department's clinical facilities by the faculty member for clinical teaching and research in STDs. The faculty member will be either a permanent, part-time employee or a contractor of the health department.

3. Based on the experiences of other successful medical school programs, participating schools are required to modify the medical school curriculum to include a minimum of 4 hours of lectures on clinical and epidemiologic aspects of STDs during the 2nd year and a minimum of 20 hours of lectures and clinical instruction to be required of all medical students in the 3rd or 4th year. A minimum of 25 hours of lectures and clinical instruction must be provided for all residents in primary care specialties. Clinical instruction of medical students and residents will take place at the health department facility described in section 2, above.

4. Provide opportunities for the faculty member for research through the medical school, the health department, or both. Clinical or prevention-oriented research should be particularly encouraged. The research involvement of the faculty member requires the approval of CDC.

5. Structure the faculty position to maximize the likelihood of long-term financial support after the termination of CDC support.

6. Arrange for semiannual meetings with the CDC project officer during the first two years and annual meetings during the last three years of the project period to review progress, observe training, and review evaluation.

7. Develop and carry out an evaluation of the effectiveness of the STD Faculty Expansion Program through analysis and interpretation of data on medical student and resident performance and on the overall impact on State and local STD prevention goals, and report this data in appropriate format to CDC.

B. CDC Activities

1. Be available to provide technical assistance to facilitate the planning and implementation of curriculum changes, the linkages with local or State health departments, and the clinical or prevention-oriented research program.

2. Be available to provide assistance in the design of an evaluation of the effectiveness of the STD Faculty Expansion Program through analysis and interpretation of data on medical student and resident performance and the overall impact on state and local STD prevention goals.

3. Arrange an annual meeting of CDC-supported faculty members to review accomplishments, discuss any problems and propose modifications.

Evaluation Criteria

The applications will be evaluated according to the following criteria:

1. The need for faculty expertise in STDs in the school and geographic area: The strength of the documentation of the need for a faculty member with clinical and research expertise in STDs expertise and the STD prevalence or incidence in the area where the medical school is located. (20 points)

2. The strength of the agreement with the health department: The quality of the documentation of a commitment from the State or local health department to provide clinical facilities, part-time employment and financial support for the faculty member in clinic facilities that routinely examine and treat a sufficient number of STD clients to provide adequate training for medical students and members of the house staff. The degree to which the applicant demonstrates innovative approaches to the medical school/health department collaboration that will contribute to locally relevant STD prevention research and programmatic activities. (20 points)

3. The quality of the assurances to continue support: The extent to which the department submitting the application demonstrates a commitment to assuring research opportunities and financial support for the faculty member during the grant period. (15 points)

4. The commitment to curriculum changes: The extent to which the applicant documents commitments from the school of medicine to implement the curriculum changes described under program requirements. Consideration will be given to those schools which demonstrate the largest commitment of additional hours for high quality instruction to the largest percentage of students and residents over the life of the project. Consideration will also be given to institutions that propose to collaborate on similar training with other medical schools or residency training programs in their geographic area. (15 points)

5. Qualifications for faculty member: The quality of the documentation of proposed qualifications for the faculty member, including infectious disease training, significant clinical experience with STDs, evidence of STD research productivity, and training in public health and/or epidemiology. A description of the selection or search process, including a proposed timeframe. (15 points)

6. Evaluation plan: The quality of the plan for evaluation of the effectiveness (cost) and usefulness of the training in terms of improved services, prevention research, or achievement of prevention goals. (10 points)

7. Strong commitment and assurances that the faculty position and the training will be continued after CDC support is diminished and terminated. (5 points)

8. Budget: The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of the funds. The level of support will depend on the availability of funds. (not scored)

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications, and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Van Malone, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–14, Atlanta, GA 30305, not later than 60 days after due date for receipt of applications. The Program Announcement Number and Program Title should be referenced on the

document. CDC does not guarantee to ''accommodate or explain'' State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements. Under these requirements, all community-based nongovernmental applicants must prepare and submit the items identified below to the head of the appropriate State and/or local health agency(s) in the program area(s) that may be impacted by the proposed project no later than the receipt date of the Federal application. The appropriate State and/or local health agency is determined by the applicant. The following must be provided:

A. A copy of the face page of the application (SF424).

B. A summary of the project that should be titled ''Public Health System Impact Statement'' (PHSIS), not to exceed one page, and include the following:

1. A description of the population to be served;

2. A summary of the services to be provided; and

3. A description of the coordination plans with the appropriate State and/or local health agencies.

If the State and/or local health official should desire a copy of the entire application, it may be obtained from the State Single Point of Contact (SPOC) or directly from the applicant.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Numbers are 93.978, Sexually Transmitted Disease Research, Demonstrations, and Public Information and Education Grants, and 93.941, HIV Demonstration, Research, Public and Professional Education Projects.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Confidentiality

Applicants must have in place systems to ensure the confidentiality of patient records.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Women, Racial and Ethnic Minorities

It is the policy of the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of the subjects. Further guidance to this policy is contained in the Federal Register, Vol. 60, No. 179, pages 47947–47951, and dated Friday, September 15, 1995.

HIV/AIDS Requirements

Recipients must comply with the document entitled, Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions (June 1992) (a copy is in the application kit). To meet the requirements for a program review panel, recipients are encouraged to use an existing program review panel, such as the one created by the State health department's HIV/AIDS Prevention Program. If the recipient forms its own program review panel, at least one member must also be an employee (or a designated representative) of a State or local health department. The names of the review panel members must be listed on the Assurance of Compliance form CDC 0.1113, which is also included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved.

Before funds can be used to develop HIV/AIDS-related materials, determine whether suitable materials are already available at the CDC National AIDS Clearinghouse.

Application Submission and Deadline

Applications lacking required documentation as requested in the Application Content section of the Program Announcement will be considered incomplete and *returned without review.* The original and two copies of the application PHS Form 5161–1 (OMB Number 0937–0189) and one electronic copy on disk must be submitted to Van Malone, Grants Management Officer, Attention: Kimberly Boyd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Center for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–15, Atlanta, GA 30305, on or before July 1, 1996.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are:

A. Received on or before the deadline or

B. Sent on or before the deadline date and received in time for submission to the independent review committee. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Privately metered postmarks will not be acceptable proof of timely mailing.)

2. *Late Applications:* Applications that do not meet the criteria in 1.A. or 1.B. are considered late applications and will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Kimberly Boyd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–15, Atlanta, GA 30305, telephone (404) 842–6592, facsimile (404) 842–6513, or via Internet <KPT0@OPSPGO1.em.cdc.gov>. Programmatic technical assistance may be obtained from H. Trent MacKay, M.D., M.P.H., Medical Epidemiologist, Training and Health Communications

Branch, Division of STD Prevention, National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–02, Atlanta, GA 30333, telephone (404) 639–8370, facsimile (404) 639–8609, or via Internet <TXM3@CPSSTD1.em.cdc.gov>.

Please refer to Announcement 616 ''STD Faculty Expansion Program'' when requesting information or submitting an application.

Potential applicants may obtain a copy of ''Healthy People 2000'' (Full Report: Stock No. 017–001–00474–0) or ''Healthy People 2000'' (Summary Report: Stock No. 017–001–00473–1) referenced in the **INTRODUCTION** through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: April 30, 1996.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–11214 Filed 5–3–96; 8:45 am]

BILLING CODE 4163–18–P

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Projects

Scholarship Program for Students of Exceptional Financial Need (EFN) and Program of Financial Assistance for Disadvantaged Health Professions Students (FADHPS): Regulatory Requirements (OMB No. 0915–0028)—Revision and Extension—The EFN Scholarship Program, authorized by section 736 of the Public Health Service (PHS) Act, and the FADHPS Program, authorized by section 740(a)(2)(F) of the PHS Act, provide financial assistance to schools of allopathic and osteopathic medicine and dentistry for awarding tuition scholarships to health professions students who are of exceptional financial need. To be eligible for support under the FADHPS Program, a student must also be from a disadvantaged background. In return for this support, students of allopathic and osteopathic medicine must agree to complete residency training in primary care and practice in primary care for 5 years after completing residency training. Students of dentistry must agree to practice in general dentistry for 5 years after completing residency training.

The program regulations contain recordkeeping requirements designed to ensure that schools maintain adequate records for the government to monitor program activity and that funds are spent as intended. The program application has been dropped from this package because no new applications are expected. The burden estimates for the regulatory requirements are as follows:

Regulatory section	Number of record-keepers	Hours per year	Total burden hours
57.2804(b)(3) & 57.2904(b)(1)(ii) Documentation of Cost of Attendance	200	0.167 hrs. (10 min.)	33.4
57.2809(b) & 57.2909 (b) Records Requirements	200	0.167 hrs. (10 min.)	33.4

Note: Estimated total annual burden is 67 hours.

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: May 1, 1996.

J. Henry Montes,

Associate Administrator for Policy Coordination.

[FR Doc. 96–11256 Filed 5–03–96; 8:45 am]

BILLING CODE 4160–15–P

Administration for Children and Families

Refugee Resettlement Program; Proposed Availability of Formula Allocation Funding for FY 1996 Targeted Assistance Grants for Services to Refugees in Local Areas of High Need

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Notice of proposed availability of formula allocation funding for FY 1996 targeted assistance grants to States for services to refugees [1] in local areas of high need.

[1] In addition to persons who meet all requirements of 45 CFR 400.43, ''Requirements for documentation of refugee status,'' eligibility for targeted assistance includes Cuban and Haitian entrants, certain Amerasians from Vietnam who are admitted to the U.S. as immigrants, and certain Amerasians from Vietnam who are U.S. citizens. (See section II of this notice on ''Authorization.'') The term ''refugee'', used in this notice for convenience, is intended to encompass such additional persons who are eligible to participate in refugee program services, including the targeted assistance program.

Refugees admitted to the U.S. under admissions numbers set aside for private-sector-initiative admissions are not eligible to be served under the targeted assistance program (or under other

SUMMARY: This notice announces the proposed availability of funds and award procedures for FY 1996 targeted assistance grants for services to refugees under the Refugee Resettlement Program (RRP). These grants are for service provision in localities with large refugee populations, high refugee concentrations, and high use of public assistance, and where specific needs exist for supplementation of currently available resources. This notice reflects the final rule published in the Federal Register on June 28, 1995 (60 FR 33584) which was effective October 1, 1995. This rule established a new subpart L, providing regulations for the Targeted Assistance Program (TAP) for the first time.

This notice proposes that the qualification of counties be based on refugee and entrant arrivals during the 5-year period from FY 1991 through FY 1995, in keeping with ORR's new regulation, and on the concentration of refugees and entrants as a percentage of the general population. Under this proposal, 15 new counties would qualify for targeted assistance and 19 counties which previously received targeted assistance grants would no longer qualify for targeted assistance funding. This notice also proposes a new allocation formula to reflect the limitation on the use of targeted assistance funding for services to refugees who have resided in the United States 5 years or less.

In addition, this notice replaces the schedule of allowable administrative cost amounts for local administrative budgets that appeared in previous notices with an allowable administrative cost amount of up to 15% for all TAP counties for the purpose of increasing local flexibility and oversight.

DATES: Comments on this notice must be received before June 5, 1996.

ADDRESSES: Address written comments, in duplicate, to: Toyo A. Biddle, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

APPLICATION DEADLINE: The deadline for applications will be established by the final notice; applications should not be sent in response to this notice of proposed allocations.

FOR FURTHER INFORMATION CONTACT: Toyo Biddle (202) 401–9250.

SUPPLEMENTARY INFORMATION:

I. Purpose and Scope

This notice announces the proposed availability of funds for grants for targeted assistance for services to refugees in counties where, because of factors such as unusually large refugee populations, high refugee concentrations, and high use of public assistance, there exists and can be demonstrated a specific need for supplementation of resources for services to this population.

The Office of Refugee Resettlement (ORR) has available $55,397,000 in FY 1996 funds for the targeted assistance program (TAP) as part of the FY 1996 appropriation for the Department of Health and Human Services (Pub. L. 104–134).

The FY 1996 House Appropriations Committee Report (H.R. Rept. No. 104–209) reads as follows with respect to targeted assistance funds:

This program provides grants to States for counties which are impacted by high concentrations of refugees and high dependency rates. The Committee agrees that $19,000,000 is available for targeted assistance to serve communities affected by the Cuban and Haitian entrants and refugees whose arrivals in recent years have increased. The Committee has set-aside 20 percent of these funds for increased support to communities with large concentrations of refugees whose cultural differences make assimilation especially difficult justifying a more intense and longer duration level of Federal assistance.

The Conference Report on Appropriations (H. Rept. No. 104–) agrees with the allocation of targeted assistance contained in the House Report.

The Director of the Office of Refugee Resettlement (ORR) proposes to use the $55,397,000 appropriated for FY 1996 targeted assistance as follows:

- $25,317,600 will be allocated under the proposed 5-year population formula, as set forth in this notice.
- $19,000,000 will be awarded to serve communities most heavily affected by recent Cuban and Haitian entrant arrivals.
- $11,079,400 (20% of the total) will be awarded under a discretionary grant announcement that will be issued separately setting forth application requirements and evaluation criteria. These funds will be used to provide increased support to communities with large concentrations of refugees whose cultural differences make assimilation especially difficult, in accordance with the intent of Congress as reflected in the House Appropriations Committee Report.

In addition, the Office of Refugee Resettlement will have available an additional $5,000,000 in FY 1996 funds for the targeted assistance discretionary program through the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996 (Pub. L. 104–107). These funds are to be used for grants to localities most heavily impacted by the influx of refugees such as Laotian Hmong, Cambodians and Soviet Pentecostals, and will be awarded under a discretionary grant announcement which will be issued setting forth application requirements and evaluation criteria.

The purpose of targeted assistance grants is to provide, through a process of local planning and implementation, direct services intended to result in the economic self-sufficiency and reduced welfare dependency of refugees through job placements.

The targeted assistance program reflects the requirements of section 412(c)(2)(B) of the Immigration and Nationality Act (INA), which provides that targeted assistance grants shall be made available ''(i) primarily for the purpose of facilitating refugee employment and achievement of self-sufficiency, (ii) in a manner that does not supplant other refugee program funds and that assures that not less than 95 percent of the amount of the grant award is made available to the county or other local entity.''

II. Authorization

Targeted assistance projects are funded under the authority of section 412(c)(2) of the Immigration and Nationality Act (INA), as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605), 8 U.S.C. 1522(c); section 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422), 8 U.S.C. 1522 note, insofar as it incorporates by reference with respect to Cuban and Haitian entrants the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above; section 584(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202), insofar as it incorporates by reference with respect to certain Amerasians from Vietnam the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above, including certain Amerasians from Vietnam who are U.S. citizens, as provided under title II of the Foreign Operations, Export

programs supported by Federal refugee funds) during their period of coverage under their sponsoring agency's agreement with the Department of State—usually two years from their date of arrival, or until they obtain permanent resident alien status, whichever comes first.

Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. 100–461), 1990 (Pub. L. 101–167), and 1991 (Pub. L. 101–513).

III. Client and Service Priorities

Targeted assistance funding must be used to assist refugee families to achieve economic independence. To this end, States and counties are required to ensure that a coherent family self-sufficiency plan is developed for each eligible family that addresses the family's needs from time of arrival until attainment of economic independence. (See §§ 400.79 and 400.156(g) of the final rule.) Each family self-sufficiency plan should address a family's needs for both employment-related services and other needed social services. The family self-sufficiency plan must include: (1) A determination of the income level a family would have to earn to exceed its cash grant and move into self-support without suffering a monetary penalty; (2) a strategy and timetable for obtaining that level of family income through the placement in employment of sufficient numbers of employable family members at sufficient wage levels; and (3) employability plans for every employable member of the family. In local jurisdictions that have both targeted assistance and refugee social services programs, one family self-sufficiency plan may be developed for a family that incorporates both targeted assistance and refugee social services.

Services funded through the targeted assistance program are required to focus primarily on those refugees who, either because of their protracted use of public assistance or difficulty in securing employment, continue to need services beyond the initial years of resettlement. Effective October 1, 1995, under new regulations at § 400.315(b) published in the Federal Register on June 28, 1995, (60 FR 33584), States may not provide services funded under this notice, except for referral and interpreter services, to refugees who have been in the United States for more than 60 months (5 years). States may, however, continue to provide employability services through September 30, 1996, or until the services are completed, whichever occurs first, to refugees who have been in the U.S. for more than 60 months, who were receiving employability services, as defined in § 400.316, as of September 30, 1995, as part of an employability plan.

In accordance with § 400.314, States are required to provide targeted assistance services to refugees in the following order of priority, except in certain individual extreme circumstances: (a) Refugees who are cash assistance recipients, particularly long-term recipients; (b) unemployed refugees who are not receiving cash assistance; and (c) employed refugees in need of services to retain employment or to attain economic independence.

In addition to the statutory requirement that TAP funds be used ''primarily for the purpose of facilitating refugee employment'' (section 412(c)(2)(B)(i)), funds awarded under this program are intended to help fulfill the Congressional intent that ''employable refugees should be placed on jobs as soon as possible after their arrival in the United States'' (section 412(a)(1)(B)(i) of the INA). Therefore, in accordance with § 400.313, targeted assistance funds must be used primarily for employability services designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program in order to achieve economic self-sufficiency as soon as possible. Targeted assistance services may continue to be provided after a refugee has entered a job to help the refugee retain employment or move to a better job. Targeted assistance funds may not be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year.

In accordance with § 400.317, if targeted assistance funds are used for the provision of English language training, such training must be provided in a concurrent, rather than sequential, time period with employment or with other employment-related activities.

A portion of a local area's allocation may be used for services which are not directed toward the achievement of a specific employment objective in less than one year but which are essential to the adjustment of refugees in the community, provided such needs are clearly demonstrated and such use is approved by the State. Allowable services include those listed under 45 CFR 400.316.

Reflecting section 412(a)(1)(A)(iv) of the INA, States must ''insure that women have the same opportunities as men to participate in training and instruction.'' In addition, in accordance with § 400.317, services must be provided to the maximum extent feasible in a manner that includes the use of bilingual/bicultural women on service agency staffs to ensure adequate service access by refugee women. The Director also strongly encourages the inclusion of refugee women in management and board positions in agencies that serve refugees. In order to facilitate refugee self-support, the Director also expects States to implement strategies which address simultaneously the employment potential of both male and female wage earners in a family unit. States and counties are expected to make every effort to assure availability of day care services for children in order to allow women with children the opportunity to participate in employment services or to accept or retain employment. To accomplish this, day care may be treated as a priority employment-related service under the targeted assistance program. Refugees who are participating in TAP-funded or social services-funded employment services or have accepted employment are eligible for day care services for children. For an employed refugee, TAP-funded day care should be limited to one year after the refugee becomes employed. States and counties, however, are expected to use day care funding from other publicly funded mainstream programs as a prior resource and are encouraged to work with service providers to assure maximum access to other publicly funded resources for day care.

In accordance with § 400.317 in the new regulations, targeted assistance services must be provided in a manner that is culturally and linguistically compatible with a refugee's language and cultural background, to the maximum extent feasible. In light of the increasingly diverse population of refugees who are resettling in this country, refugee service agencies will need to develop practical ways of providing culturally and linguistically appropriate services to a changing ethnic population. Services funded under this notice must be refugee-specific services which are designed specifically to meet refugee needs and are in keeping with the rules and objectives of the refugee program. Vocational or job-skills training, on-the-job training, or English language training, however, need not be refugee-specific.

When planning targeted assistance services, States must take into account the reception and placement (R&P) services provided by local resettlement agencies in order to utilize these resources in the overall program design and to ensure the provision of seamless, coordinated services to refugees that are not duplicative. See § 400.156(b).

ORR strongly encourages States and counties when contracting for targeted assistance services, including employment services, to give consideration to the special strengths of mutual assistance associations (MAAs), whenever contract bidders are otherwise equally qualified, provided that the

MAA has the capability to deliver services in a manner that is culturally and linguistically compatible with the background of the target population to be served. ORR also strongly encourages MAAs to ensure that their management and board composition reflect the major target populations to be served.

ORR defines MAAs as organizations with the following qualifications:

a. The organization is legally incorporated as a nonprofit organization; and

b. Not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association is comprised of refugees or former refugees, including both refugee men and women.

Finally, in order to provide culturally and linguistically compatible services in as cost-efficient a manner as possible in a time of limited resources, ORR strongly encourages States and counties to promote and give special consideration to the provision of services through coalitions of refugee service organizations, such as coalitions of MAAs, voluntary resettlement agencies, or a variety of service providers. ORR believes it is essential for refugee-serving organizations to form close partnerships in the provision of services to refugees in order to be able to respond adequately to a changing refugee picture. Coalition-building and consolidation of providers is particularly important in communities with multiple service providers in order to ensure better coordination of services and maximum use of funding for services by minimizing the funds used for multiple administrative overhead costs.

The award of funds to States under this notice will be contingent upon the completeness of a State's application as described in section IX, below.

IV. [Reserved for Discussion of Comments in the Final Notice]

V. Eligible Grantees

Eligible grantees are those agencies of State governments that are responsible for the refugee program under 45 CFR 400.5 in States containing counties which qualify for FY 1996 targeted assistance awards.

The Director of ORR proposes to determine the eligibility of counties for inclusion in the FY 1996 targeted assistance program on the basis of the method described in section VI of this notice.

The use of targeted assistance funds for services to Cuban and Haitian entrants is limited to States which have an approved State plan under the Cuban/Haitian Entrant Program (CHEP).

The State agency will submit a single application on behalf of all county governments of the qualified counties in that State. Subsequent to the approval of the State's application by ORR, local targeted assistance plans will be developed by the county government or other designated entity and submitted to the State.

A State with more than one qualified county is permitted, but not required, to determine the allocation amount for each qualified county within the State. However, if a State chooses to determine county allocations differently from those set forth in the final notice, in accordance with § 400.319, the FY 1996 allocations proposed by the State must be based on the State's population of refugees who arrived in the U.S. during the most recent 5-year period. A State may use welfare data as an additional factor in the allocation of its targeted assistance funds if it so chooses; however, a State may not assign a greater weight to welfare data than it has assigned to population data in its allocation formula. In addition, if a State chooses to allocate its FY 1996 targeted assistance funds in a manner different from the formula set forth in the final notice, the FY 1996 allocations and methodology proposed by the State must be included in the State's application for ORR review and approval.

Applications submitted in response to the final notice are not subject to review by State and areawide clearinghouses under Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

VI. Qualification and Allocation Formulas

Beginning with FY 1996, ORR proposes to eliminate the formulas used to date for qualification for, and allocation of, targeted assistance funds and replace them with new formulas in keeping with § 400.315 in ORR's final rule which limits the use of targeted assistance funds to serving refugees who have been in the U.S. 5 years or less.

A. Qualifying New Counties

In order to qualify for application for FY 1996 targeted assistance funds, a county (or group of adjacent counties with the same Standard Metropolitan Statistical Area, or SMSA) or independent city, would be required to rank above a selected cut-off point of jurisdictions for which data were reviewed, based on two criteria: (1) The number of refugee/entrant arrivals placed in the county during the most recent 5-year period (FY 1991—FY 1995); and (2) the 5-year refugee/entrant population as a percent of the county overall population.

Welfare dependency will no longer be used as a qualifying criterion since welfare dependency data for refugee AFDC recipients have not been available at the national level since FY 1989.

Each county would be ranked on the basis of its 5-year arrival population and its concentration of refugees, with a relative weighting of 2 to 1 respectively, because we believe that large numbers of refugee/entrant arrivals into a county create a significant impact, regardless of the ratio of refugees to the county general population.

Each county would then be ranked in terms of the sum of a county's rank on refugee arrivals and its rank on concentration. To qualify for targeted assistance, a county would have to rank within the top 38 counties. ORR has decided to limit the number of qualified counties to the top 38 counties in order to target a sufficient level of funding to the most impacted counties.

ORR has screened data on all counties that have received awards for targeted assistance since FY 1983 and on all other counties that could potentially qualify for TAP funds based on the criteria proposed in this notice. Analysis of these data indicates that: (1) 23 counties which have previously received targeted assistance would continue to qualify; (2) 19 counties which have previously received targeted assistance would no longer qualify; and (3) 15 new counties would be qualified.

Table 1 provides a list of the counties that would remain qualified and the new counties that would qualify, the number of refugee/entrant arrivals in those counties within the past 5 years, the percent that the 5-year arrival population represents of the overall county population, and each county's rank, based on the qualification formula described above. Table 2 lists the counties that have previously received targeted assistance which would no longer qualify, the number of refugee/entrant arrivals in those counties within the past 5 years, the percent that the 5-year arrival population represents of the overall county population, and each county's rank, based on the qualification formula.

The ORR Director proposes to determine qualification of counties for targeted assistance funds once every three years. Thus the proposed counties listed in this notice as qualified to apply for FY 1996 TAP funding would remain qualified for TAP funding through FY 1998. ORR does not plan to consider the eligibility of additional counties for TAP funding until FY 1999, when ORR will again review data on all counties that

could potentially qualify for TAP funds based on the criteria proposed in this notice. We believe that a more frequent redetermination of county qualification for targeted assistance would not provide qualifying counties a sufficient period of time within a stable funding climate to adequately address the refugee impact in their counties, while a less frequent redetermination of county qualification would pose the risk of not considering new population impacts in a timely manner.

B. Allocation Formula

Of the funds available for FY 1996 for targeted assistance, $25,317,600 would be allocated by formula to States for qualifying counties based on the initial placements of refugees, Amerasians, and entrants in these counties during the 5-year period from FY 1991 through FY 1995 (October 1, 1990—September 30, 1995).

At this time, ORR entrant arrival data do not include Cuban parolees who came to the U.S. directly from Havana in FY 1995 under the U.S. Bilateral Agreement with Cuba. Reliable data on these parolees are difficult to obtain since these parolees are not resettled through sponsoring agencies. We hope to be able to establish a method for obtaining reliable arrival data on these entrants in the future. States that wish to receive credit for its Cuban parolee population that came directly from Havana in FY 1995, may submit evidence to ORR during the 30-day comment period for consideration. Evidence should include the parolee's name, alien number, date of birth, and date of arrival.

In the final notice, allocation amounts may reflect final adjustments in FY 1995 arrival data in some States.

C. Allocation Formula for Communities Affected by Recent Cuban/Haitian Arrivals

Allocations for recent Cuban and Haitian entrant arrivals are based on entrant arrival numbers during the 5-year period beginning October 1, 1990 through September 30, 1995. Allocations are limited to targeted assistance counties that received 900 or more Cuban and Haitian arrivals during the 5-year period. We have limited allocations to counties with at least 900 entrants to target these resources on the most impacted counties.

VII. Allocations

Table 3 lists the proposed qualifying counties, the number of refugee/entrant arrivals in those counties during the 5-year period from October 1, 1990–September 30, 1995, the proposed amount of each county's allocation based on its 5-year arrival population, the number of Cuban and Haitian entrant arrivals in each county during FY 1991–FY 1995, the allocation amount for each county that received 900 or more entrants during the 5-year period, and the total proposed FY 1996 allocation for each county.

Table 4 provides State totals for targeted assistance allocations.

Table 5 indicates the areas that each proposed qualified county represents.

TABLE 1.—TOP 38 COUNTIES ELIGIBLE FOR TARGETED ASSISTANCE

[Targeted Assistance Counties Proposed for Continuation]

County and state	5-year arrival pop.	Concentration percent	Rank
Alameda, CA	5,915	0.4624	24
Fresno, CA	6,856	1.0271	7
Merced, CA	1,885	1.0566	37
Orange, CA	26,216	1.0876	4
Sacramento, CA	12,967	1.2454	5
San Diego, CA	13,571	0.5433	14
San Francisco, CA	11,798	0.7357	11
San Joaquin, CA	3,016	0.6275	28
Santa Clara, CA	18,395	1.2283	3
Los Angeles, CA	30,383	0.3428	20
Dade, FL	45,405	2.3440	1
Palm Beach, FL	3,517	0.4073	35
Cook/Kane, IL	18,969	0.3498	1
Suffolk, MA	6,298	0.9486	13
Hennepin, MN	5,322	0.5155	22
Ramsey, MN	4,811	0.9904	15
New York, NY	87,553	1.1957	2
Multnomah, OR	11,454	0.8110	9
Philadelphia, PA	8,642	0.5450	16
Dallas/Tarrant, TX	13,360	0.4420	17
Harris, TX	11,328	0.4020	23
Fairfax, VA	4,847	0.5054	25
King, WA	17,618	0.8930	6
New Counties That Would Qualify:			
District of Columbia	4,467	0.7360	18
Duval, FL	3,267	0.4855	33
De Kalb, GA	5,761	1.0554	1
Fulton, GA	6,580	1.0139	10
Polk, IA	2,784	0.8510	7
City of Baltimore, MD	3,568	0.4848	29
Oakland, MI	4,100	0.3784	38
City of St Louis, MO	5,442	1.3719	8
Lancaster, NE	2,894	1.3546	19
Bernalillo, NM	2,776	0.5776	36
Broome, NY	2,154	1.0153	34
Monroe, NY	3,495	0.4895	30
Oneida, NY	2,300	0.9169	43
Davidson, TN	3,308	0.6476	26

TABLE 1.—TOP 38 COUNTIES ELIGIBLE FOR TARGETED ASSISTANCE—Continued

[Targeted Assistance Counties Proposed for Continuation]

County and state	5-year arrival pop.	Concentration percent	Rank
Richmond, VA	2,165	1.0662	31

TABLE 2.—TARGETED ASSISTANCE COUNTIES THAT WOULD NO LONGER QUALIFY

County and state	5-year arrival pop.	Concentration percent	Rank
Contra Costa, CA	1,748	0.2175	87
Tulare, CA	1,110	0.3559	85
Stanislaus, CA	1,258	0.3395	81
Denver, CO	5,472	0.3061	39
Broward, FL	3,356	0.2673	51
Hillsborough, FL	2,610	0.3129	56
Honolulu, HI	1,363	0.1630	110
Sedgwick, KS	1,572	0.3894	67
Orleans, LA	1,257	0.1330	118
Montgomery/Prince Georges, MD	4,528	0.3047	48
Middlesex, MA	3,114	0.2227	62
Jackson, MO	3,233	0.4066	41
Essex, NJ	2,088	0.2683	68
Hudson, NJ	2,726	0.4929	45
Union, NJ	1,218	0.2466	101
Providence, RI	1,389	0.2329	96
Salt Lake, UT	2,957	0.2511	60
Arlington, VA	1,468	0.8588	53
Pierce, WA	2,825	0.4819	42

TABLE 3.—PROPOSED TARGETED ASSISTANCE ALLOCATIONS BY COUNTY: FY 1996

County, state	Arrivals: refugee + entrant FY 1991–1995	$25,317,600 Proposed FY 1996 allocation	Entrants FY 1991–1995	Entrants: more than 900	$19,000,000 Proposed FY 1996 C/H allocation	$44,317,600 Total proposed FY 1996 allocation
ALAMEDA, CA	5,915	$352,205	16			$352,205
FRESNO, CA	6,856	408,236	0			408,236
LOS ANGELES, CA	30,383	1,809,136	604			1,809,136
MERCED, CA	1,855	112,241	0			112,241
ORANGE, CA	26,218	1,561,134	30			1,561,134
SACRAMENTO, CA	12,967	772,112	3			772,112
SAN DIEGO, CA	13,571	808,076	370			808,076
SAN FRANSCISCO, CA	11,798	702,504	187			702,504
SAN JOAQUIN, CA	3,016	179,586	2			179,586
SANTA CLARA, CA	18,395	1,095,318	12			1,095,318
DISTRICT OF COL	4,467	265,985	13			265,985
DADE, FL	45,405	2,703,611	33,701	33,701	$16,666,294	19,369,905
DUVAL, FL	3,267	194,531	20			194,531
PALM BEACH, FL	3,517	209,417	2,757	2,757	1,363,430	1,572,847
DE KALB, GA	5,761	343,035	18			343,035
FULTON, GA	6,580	391,802	164			391,802
COOK/KANE, IL	18,969	1,129,497	321			1,129,497
POLK, IA	2,784	165,771	0			165,771
BALTIMORE, MD [1]	3,568	212,454	1			212,454
SUFFOLK, MA	6,298	375,010	270			375,010
OAKLAND, MI	4,100	244,132	8			244,132
HENNEPIN, MN	5,322	316,895	0			316,895
RAMSEY, MN	4,811	286,468	8			286,468
ST LOUIS, MO [1]	5,442	324,040	1			324,040
LANCASTER, NE	2,894	172,321	5			172,321
BERNALILLO, NM	2,776	165,295	950	950	469,807	635,102
BROOME, NY	2,154	128,259	29			128,259
MONROE, NY	3,495	208,107	403			208,107
NEW YORK, NY	87,553	5,213,286	1,012	1,012	500,469	5,713,755
ONEIDA, NY	2,300	136,952	1			136,952
MULTNOMAH, OR	11,454	682,021	320			682,021
PHILADELPHIA, PA	8,642	514,582	65			514,582
DAVIDSON, TN	3,308	196,973	1			196,973

TABLE 3.—PROPOSED TARGETED ASSISTANCE ALLOCATIONS BY COUNTY: FY 1996—Continued

County, state	Arrivals: refugee + entrant FY 1991–1995	$25,317,600 Proposed FY 1996 allocation	Entrants FY 1991–1995	Entrants: more than 900	$19,000,000 Proposed FY 1996 C/H allocation	$44,317,600 Total proposed FY 1996 allocation
DALLAS/TARRANT, TX	13,360	795,513	441	.....	.....	795,513
HARRIS, TX	11,328	674,518	93	.....	.....	674,518
FAIRFAX, VA	4,847	288,611	3	.....	.....	288,611
RICHMOND, VA	2,165	128,914	82	.....	.....	128,914
KING/SNOHOMISH, WA	17,618	1,049,052	12	.....	.....	1,049,052
Total	425,189	25,317,600	41,923	38,420	19,000,000	44,317,600

[1] The qualifying local jurisdiction is the independent City of Baltimore and the independent City of St. Louis.

TABLE 4.—PROPOSED TARGETED ASSISTANCE ALLOCATIONS BY STATE: FY 1996

State	Arrivals: Refugee + Entrant FY 1991–1995	$25,317,600 Proposed FY 1996 Allocation	$19,000,000 Proposed FY 1996 C/H Allocation	$44,317,600 Total Proposed FY 1996 Allocation
CALIFORNIA	131,004	$7,800,548	.....	$7,800,548
DISTRICT OF COL	4,467	265,985	.....	265,985
FLORIDA	52,189	3,107,559	$18,029,724	21,137,283
GEORGIA	12,341	734,837	.....	734,837
ILLINOIS	18,969	1,129,497	.....	1,129,497
IOWA	2,784	165,771	.....	165,771
MARYLAND	3,568	212,454	.....	212,454
MASSACHUSETTS	6,298	375,010	.....	375,010
MICHIGAN	4,100	244,132	.....	244,132
MINNESOTA	10,133	603,363	.....	603,363
MISSOURI	5,442	324,040	.....	324,040
NEBRASKA	2,894	172,321	.....	172,321
NEW MEXICO	2,776	165,295	469,807	635,102
NEW YORK	95,502	5,686,604	500,469	6,187,073
OREGON	11,454	682,021	.....	682,021
PENNSYLVANIA	8,642	514,582	.....	514,582
TENNESSEE	3,308	196,973	.....	196,973
TEXAS	24,688	1,470,031	.....	1,470,031
VIRGINIA	7,012	417,525	.....	417,525
WASHINGTON	17,618	1,049,052	.....	1,049,052
Total	425,189	25,317,600	19,000,000	44,317,600

TABLE 5.—TARGETED ASSISTANCE AREAS

State	Targeted assistance area [1]	Definition
CA	ALAMEDA	
CA	FRESNO	
CA	LOS ANGELES	
CA	MERCED	
CA	ORANGE	
CA	SACRAMENTO	
CA	SAN DIEGO	
CA	SAN FRANCISCO	MARIN, SAN FRANCISCO, & SAN MATEO COUNTIES
CA	SAN JOAQUIN	
CA	SANTA CLARA	
DC	DISTRICT OF COL.	
FL	DADE	
FL	DUVAL	
FL	PALM BEACH	
GA	DEKALB	
GA	FULTON	
IL	COOK/KANE	
IA	POLK	
MD	CITY OF BALTIMORE	
MA	SUFFOLK	
MI	OAKLAND	
MN	HENNEPIN	
MN	RAMSEY	

TABLE 5.—TARGETED ASSISTANCE AREAS—Continued

State	Targeted assistance area [1]	Definition
MO	CITY OF ST. LOUIS	
NE	LANCASTER	
NM	BERNALILLO	
NY	BROOME	
NY	MONROE	
NY	NEW YORK	BRONX, KINGS, NEW YORK, QUEENS, & RICHMOND COUNTIES.
NY	ONEIDA	
OR	MULTNOMAH	CLACKAMAS, MULTNOMAH, & WASHINGTON COUNTIES, OR. & CLARK COUNTY, WA.
PA	PHILADELPHIA	
TN	DAVIDSON	
TX	DALLAS/TARRANT	
TX	HARRIS	
VA	FAIRFAX	FAIRFAX COUNTY & THE INDEPENDENT CITIES OF ALEXANDRIA, FAIRFAX AND FALLS CHURCH.
VA	RICHMOND	
WA	KING/SNOHOMISH	

[1] Consists of named county/counties unless otherwise defined.

VIII. Application and Implementation Process

Under the FY 1996 targeted assistance program, States may apply for and receive grant awards on behalf of qualified counties in the State. A single allocation will be made to each State by ORR on the basis of an approved State application. The State agency will, in turn, receive, review, and determine the acceptability of individual county targeted assistance plans.

Pursuant to § 400.210(b), FY 1996 targeted assistance funds must be obligated by the State agency no later than one year after the end of the Federal fiscal year in which the Department awarded the grant. Funds must be liquidated within two years after the end of the Federal fiscal year in which the Department awarded the grant. A State's final financial report on targeted assistance expenditures must be received no later than two years after the end of the Federal fiscal year in which the Department awarded the grant. If final reports are not received on time, the Department will deobligate any unexpended funds, including any unliquidated obligations, on the basis of a State's last filed report.

Although additional funding for communities affected by Cuban and Haitian entrants and refugees whose arrivals in recent years have increased is part of the appropriation amount for targeted assistance, the scope of activities for these additional funds will be administratively determined. Applications for these funds are therefore not subject to provisions contained in this notice but to other requirements which will be conveyed separately. Similarly, the requirements regarding the discretionary portion of the targeted assistance appropriation will be addressed separately in the grant announcement for those funds.

IX. Application Requirements

In applying for targeted assistance funds, a State agency is required to provide the following:

A. Assurance that effective October 1, 1995, targeted assistance funds will be used in accordance with the new ORR regulations published in the Federal Register on June 28, 1995.

B. Assurance that targeted assistance funds will be used primarily for the provision of services which are designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program. States must indicate what percentage of FY 1996 targeted assistance formula allocation funds that are used for services will be allocated for employment services.

C. Assurance that targeted assistance funds will not be used to offset funding otherwise available to counties or local jurisdictions from the State agency in its administration of other programs, e.g. social services, cash and medical assistance, etc.

D. Identification of the local administering agency.

E. The amount of funds to be awarded to the targeted county or counties. If a State with more than one qualifying targeted assistance county chooses to allocate its targeted assistance funds differently from the formula allocation for counties presented in the ORR targeted assistance notice in a fiscal year, its allocations must be based on the State's population of refugees who arrived in the U.S. during the most recent 5-year period. A State may use welfare data as an additional factor in the allocation of targeted assistance funds if it so chooses; however, a State may not assign a greater weight to welfare data than it has assigned to population data in its allocation formula. The application must provide a description of, and supporting data for, the State's proposed allocation plan, the data to be used, and the proposed allocation for each county.

In instances where a State receives targeted assistance funding for impacted counties contained in a standard metropolitan statistical area (SMSA) which includes a county or counties located in a neighboring State, the State receiving those funds must provide a description of coordination and planning activities undertaken with the State Refugee Coordinator of the neighboring State in which the impacted county or counties are located. These planning and coordination activities should result in a proposed allocation plan for the equitable distribution of targeted assistance funds by county based on the distribution of the eligible population by county within the SMSA. The proposed allocation plan must be included in the State's application to ORR.

F. A description of the State's guidelines for the required content of county targeted assistance plans and a description of the State's review/approval process for such county plans. Acceptable county plans must minimally include the following:

1. Assurance that targeted assistance funds will be used in accordance with the new ORR regulations published in the Federal Register on June 28, 1995. In particular, a description of a county's plan to carry out the requirements of 45 CFR 400.156.

2. Procedures for carrying out a local planning process for determining

targeted assistance priorities and service strategies. All local targeted assistance plans will be developed through a planning process that involves, in addition to the State Refugee Coordinator, representatives of the private sector (for example, private employers, private industry council, Chamber of Commerce, etc.), leaders of refugee/entrant community-based organizations, voluntary resettlement agencies, refugees from the impacted communities, and other public officials associated with social services and employment agencies that serve refugees. Counties are encouraged to foster coalition-building among these participating organizations.

3. Identification of refugee/entrant populations to be served by targeted assistance projects, including approximate numbers of clients to be served, and a description of characteristics and needs of targeted populations. (As per 45 CFR 400.314)

4. Description of specific strategies and services to meet the needs of targeted populations. These should be justified where possible through analysis of strategies and outcomes from projects previously implemented under the targeted assistance programs, the regular social service programs, and any other services available to the refugee population.

5. The relationship of targeted assistance services to other services available to refugees/entrants in the county including State-allocated ORR social services.

6. Analysis of available employment opportunities in the local community. Examples of acceptable analyses of employment opportunities might include surveys of employers or potential employers of refugee clients, surveys of presently effective employment service providers, review of studies on employment opportunities/forecasts which would be appropriate to the refugee populations.

7. Description of the monitoring and oversight responsibilities to be carried out by the county or qualifying local jurisdiction.

8. Assurance that the local administrative budget will not exceed 15% of the local allocation. Targeted assistance grants are cost-based awards. Neither a State nor a county is entitled to a certain amount for administrative costs. Rather, administrative cost requests should be based on projections of actual needs. Beginning with FY 1996 funds, all TAP counties will be allowed to spend up to 15% of their allocation on TAP administrative costs, as need requires. However, States and counties are strongly encouraged to limit administrative costs to the extent possible to maximize available funding for services to clients.

9. For any State that administers the program directly or otherwise provides direct service to the refugee/entrant population (with the concurrence of the county), the State must provide ORR with the same information required above for review and prior approval.

G. All applicants must establish targeted assistance proposed performance goals for each of the 6 ORR performance outcome measures for each impacted county's proposed service contract(s) or sub-grants for the next contracting cycle. Proposed performance goals must be included in the application for each performance measure. The 6 ORR performance measures are: entered employments, cash assistance reductions due to employment, cash assistance terminations due to employment, 90-day employment retentions, average wage at placement, and job placements with available health benefits. Targeted assistance program activity and progress achieved toward meeting performance outcome goals are to be reported quarterly on the ORR–6, the ''Quarterly Performance Report.''

States which are currently grantees for targeted assistance funds should base projected annual outcome goals on past performance. Current grantees should have adequate baseline data for at least 3 of the 6 ORR performance outcome measures (entered employments, 90 day retentions, and average wage at placement) based on a long history (in some cases, as much as 12 years) of targeted assistance program experience. Where baseline data do not exist for a specific performance outcome measure, current grantees should use available performance data from the current targeted assistance funding cycle to establish reasonable outcome goals for contractors and sub-grantees on all 6 measures.

States identified as new eligible targeted assistance grantees are also required to set proposed outcome goals for each of the 6 ORR performance outcome measures. New grantees may use baseline data, as available, and current data as reported on the ORR–6 for social services program activity to assist them in the goal-setting process.

Proposed targeted assistance outcome goals should reflect improvement over past performance and strive for continuous improvement during the project period from one year to another.

H. An identification of the contracting cycle dates for targeted assistance service contracts in each county. States with more than one qualified county are encouraged to ensure that all counties participating in TAP in the State use the same contracting cycle dates.

I. A description of the State's plan for conducting fiscal and programmatic monitoring and evaluations of the targeted assistance program, including frequency of on-site monitoring.

J. Assurance that the State will make available to the county or designated local entity not less than 95% of the amount of its formula allocation for purposes of implementing the activities proposed in its plan, except in the case of a State that administers the program locally as described in item F9 above.

K. A line item budget and justification for State administrative costs limited to a maximum of 5% of the total award to the State. Each total budget period funding amount requested must be necessary, reasonable, and allocable to the project. States that administer the program locally in lieu of the county, through a mutual agreement with the qualifying county, may add up to, but not exceed, 10% of the county's TAP allocation to the State's administrative budget.

L. Assurance that the State will follow or mandate that its sub-recipients will follow appropriate State procurement and contract requirements in the acquisition, administration, and management of targeted assistance service contracts.

X. Reporting Requirements

Effective January 1, 1996, States will be required to submit quarterly reports on the outcomes of the targeted assistance program, using Schedule A and Schedule C of the new ORR–6 Quarterly Performance Report form which was sent to States in ORR State Letter 95–35 on November 6, 1995.

Dated: April 29, 1996.

Lavinia Limon,

Director, Office of Refugee Resettlement.

[FR Doc. 96–11145 Filed 5–03–96; 8:45 am]

BILLING CODE 4184–01–P

Office of Refugee Resettlement

Refugee Resettlement Program: Proposed Allocations to States of FY 1996 Funds for Refugee Social Services

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Notice of proposed allocations to States of FY 1996 funds for refugee [1] social services.

[1] In addition to persons who meet all requirements of 45 CFR 400.43, ''Requirements for documentation of refugee status,'' eligibility for

SUMMARY: This notice announces the proposed allocations to States of FY 1996 funds for social services under the Refugee Resettlement Program (RRP). In the final notice, allocation amounts could be adjusted slightly based on final adjustments in FY 1995 arrivals in some States. This notice reflects the new social service provisions in the final rule published in the Federal Register on June 28, 1995, (60 FR 33584) which became effective October 1, 1995. This notice discontinues the special discretionary funds set-aside for services to former political prisoners from Vietnam.

EFFECTIVE DATE: Comments on the proposed allocations contained in this notice must be received by June 5, 1996.

ADDRESSES: Address written comments, in duplicate, to: Toyo A. Biddle, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Toyo Biddle (202) 401–9250.

SUPPLEMENTARY INFORMATION:

I. Amounts Proposed For Allocation

The Office of Refugee Resettlement (ORR) has available $80,802,000 in FY 1996 refugee social service funds as part of the FY 1996 appropriation for the Department of Health and Human Services (Pub. L. 104–134).

Of the total of $80,802,000, the Director of ORR proposes to make available to States $68,681,700 (85%) under the allocation formula set out in this notice. These funds would be made available for the purpose of providing social services to refugees. We are discontinuing in FY 1996 the special $2,000,000 discretionary funds set-aside for services to former political prisoners from Vietnam. However, ORR expects States to address the special needs of former political prisoners from Vietnam through their regular refugee social service funds as part of the States' 5-year eligible service population.

Refugee Social Service Funds

The population figures for the social service allocation include refugees, Cuban/Haitian entrants, and Amerasians from Vietnam since these populations may be served through funds addressed in this notice. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program or indicate in its refugee program State plan that Cuban/Haitian entrants will be served in order to use funds on behalf of entrants as well as refugees.)

The Director proposes to allocate $68,681,700 to States on the basis of each State's proportion of the national population of refugees who had been in the U.S. 3 years or less as of October 1, 1995 (including a floor amount for States which have small refugee populations).

The use of the 3-year population base in the allocation formula is required by section 412(c)(1)(B) of the Immigration and Nationality Act (INA) which states that the ''funds available for a fiscal year for grants and contracts [for social services] * * * shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year.''

As established in the FY 1991 social services notice published in the Federal Register of August 29, 1991, section I, ''Allocation Amounts'' (56 FR 42745), a variable floor amount for States which have small refugee populations is calculated as follows: If the application of the regular allocation formula yields less than $100,000, then—

(1) a base amount of $75,000 is provided for a State with a population of 50 or fewer refugees who have been in the U.S. 3 years or less; and

(2) for a State with more than 50 refugees who have been in the U.S. 3 years or less: (a) A floor has been calculated consisting of $50,000 plus the regular per capita allocation for refugees above 50 up to a total of $100,000 (in other words, the maximum under the floor formula is $100,000); (b) if this calculation has yielded less than $75,000, a base amount of $75,000 is provided for the State.

ORR has consistently supported floors for small States in order to provide sufficient funds to carry out a minimum service program. Given the range in numbers of refugees in the small States, we have concluded that a variable floor, as established in the FY 1991 notice, will be more reflective of needs than previous across-the-board floors.

The $12,120,300 in remaining social service funds (15% of the total funds available) is expected to be used by ORR on a discretionary basis to provide funds for individual projects intended to contribute to the effectiveness and efficiency of the refugee resettlement program. Grant announcements on discretionary initiatives will be issued separately.

Population to be Served

Although the allocation formula is based on the 3-year refugee population, in accordance with the current requirements of 45 CFR Part 400 Subpart I—Refugee Social Services, States are not required to limit social service programs to refugees who have been in the U.S. only 3 years. However, effective October 1, 1995, under new regulations published in the Federal Register on June 28, 1995, (60 FR 33584), States may not provide services funded by this notice, except for referral and interpreter services, to refugees who have been in the United States for more than 60 months (5 years). States may, however, continue to provide employability services through September 30, 1996, or until the services are completed, whichever occurs first, to refugees who have been in the U.S. for more than 60 months, who were receiving employability services, as defined in § 400.154, as of September 30, 1995, as part of an employability plan.

In accordance with § 400.147, States are required to provide services to refugees in the following order of priority, except in certain individual extreme circumstances: (a) All newly arriving refugees during their first year in the U.S., who apply for services; (b) refugees who are receiving cash assistance; (c) unemployed refugees who are not receiving cash assistance; and (d) employed refugees in need of services to retain employment or to attain economic independence.

ORR funds may not be used to provide services to United States citizens, since they are not covered under the authorizing legislation, with the following exceptions: (1) Under current regulations at 45 CFR 400.208, services may be provided to a U.S.-born minor child in a family in which both parents are refugees or, if only one

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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 Acts, 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.

Refugees admitted to the U.S. under admissions numbers set aside for private-sector-initiative admissions are not eligible to be served under the social service program (or under other programs supported by Federal refugee funds) during their period of coverage under their sponsoring agency's agreement with the Department of State—usually two years from their date of arrival or until they obtain permanent resident alien status, whichever comes first.

parent is present, in which that parent is a refugee; and (2) under the FY 1989 Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. 100–461), services may be provided to an Amerasian from Vietnam who is a U.S. citizen and who enters the U.S. after October 1, 1988.

Service Priorities

Refugee social service funding should be used to assist refugee families to achieve economic independence. To this end, States are required to ensure that a coherent family self-sufficiency plan is developed for each eligible family that addresses the family's needs from time of arrival until attainment of economic independence. (See §§ 400.79 and 400.156(g).) Each family self-sufficiency plan should address a family's needs for both employment-related services and other needed social services. The family self-sufficiency plan must include: (1) A determination of the income level a family would have to earn to exceed its cash grant and move into self-support without suffering a monetary penalty; (2) a strategy and timetable for obtaining that level of family income through the placement in employment of sufficient numbers of employable family members at sufficient wage levels; and (3) employability plans for every employable member of the family.

Reflecting section 412(a)(1)(A)(iv) of the INA, and in keeping with § 400.145, States must ensure that women have the same opportunities as men to participate in all services funded under this notice, including job placement services. In addition, services must be provided to the maximum extent feasible in a manner that includes the use of bilingual/bicultural women on service agency staffs to ensure adequate service access by refugee women. The Director also strongly encourages the inclusion of refugee women in management and board positions in agencies that serve refugees. In order to facilitate refugee self-support, the Director also expects States to implement strategies which address simultaneously the employment potential of both male and female wage earners in a family unit, particularly in the case of large families. States are expected to make every effort to assure the availability of day care services for children in order to allow women with children the opportunity to participate in employment services or to accept or retain employment. To accomplish this, day care may be treated as a priority employment-related service under the refugee social services program. Refugees who are participating in employment services or have accepted employment are eligible for day care services for children. For an employed refugee, day care funded by refugee social service dollars should be limited to one year after the refugee becomes employed. States are expected to use day care funding from other publicly funded mainstream programs as a prior resource and are expected to work with service providers to assure maximum access to other publicly funded resources for day care.

In accordance with § 400.146 in the new regulations, social service funds must be used primarily for employability services designed to enable refugees to obtain jobs within one year of becoming enrolled in services in order to achieve economic self-sufficiency as soon as possible. Social services may continue to be provided after a refugee has entered a job to help the refugee retain employment or move to a better job. Social service funds may not be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year.

In accordance with § 400.156, refugee social services must be provided, to the maximum extent feasible, in a manner that is culturally and linguistically compatible with a refugee's language and cultural background. In light of the increasingly diverse population of refugees who are resettling in this country, refugee service agencies will need to develop practical ways of providing culturally and linguistically appropriate services to a changing ethnic population.

Services funded under this notice must be refugee-specific services which are designed specifically to meet refugee needs and are in keeping with the rules and objectives of the refugee program. Vocational or job skills training, on-the-job training, or English language training, however, need not be refugee-specific.

English language training must be provided in a concurrent, rather than sequential, time period with employment or with other employment-related activities.

When planning State refugee services, States must take into account the reception and placement (R & P) services provided by local resettlement agencies in order to utilize these resources in the overall program design and to ensure the provision of seamless, coordinated services to refugees that are not duplicative.

In order to provide culturally and linguistically compatible services in as cost-efficient a manner as possible in a time of limited resources, ORR encourages States and counties to promote and give special consideration to the provision of refugee social services through coalitions of refugee service organizations, such as coalitions of mutual assistance associations (MAAs), voluntary resettlement agencies, or a variety of service providers. ORR believes it is essential for refugee-serving organizations to form close partnerships in the provision of services to refugees in order to be able to respond adequately to a changing refugee picture. Coalition-building and consolidation of providers is particularly important in communities with multiple service providers in order to ensure better coordination of services and maximum use of funding for services by minimizing the funds used for multiple administrative overhead costs.

States should also expect to use funds available under this notice to pay for social services which are provided to refugees who participate in alternative projects. Section 412(e)(7)(A) of the INA provides that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate notice in the Federal Register with respect to applications for such projects (60 FR 15766, March 27, 1995). The notice on alternative projects does not contain provisions for the allocation of additional social service funds beyond the amounts established in this notice. Therefore a State which may wish to consider carrying out such a project should take note of this in planning its use of social service funds being allocated under the present notice.

Funding to MAAs

ORR no longer provides set-aside funds to refugee mutual assistance associations as a separate component under the social service notice; instead we have folded these funds into the social service formula allocation to States. Elimination of the MAA set-aside, however, does not represent any reduction in ORR's commitment to MAAs as important participants in

refugee resettlement. ORR believes that the continued and/or increased utilization of qualified refugee mutual assistance associations in the delivery of social services helps to ensure the provision of culturally and linguistically appropriate services as well as increasing the effectiveness of the overall service system. Therefore, ORR expects States to use MAAs as service providers to the maximum extent possible. ORR strongly encourages States when contracting for services, including employment services, to give consideration to the special strengths of MAAs, whenever contract bidders are otherwise equally qualified, provided that the MAA has the capability to deliver services in a manner that is culturally and linguistically compatible with the background of the target population to be served. ORR also strongly encourages MAAs to ensure that their management and board composition reflect the major target populations to be served. ORR expects States to continue to assist MAAs in seeking other public and/or private funds for the provision of services to refugee clients.

States may use a portion of their social service grant, either through contracts or through the use of State/county staff, to provide technical assistance and organizational training to strengthen the capability of MAAs to provide employment services, particularly in States where MAA capability is weak or undeveloped.

ORR defines MAAs as organizations with the following qualifications:

a. The organization is legally incorporated as a nonprofit organization; and

b. Not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association is comprised of refugees or former refugees, including both refugee men and women.

II. [Reserved for Discussion of Comments In Final Notice]

III. Allocation Formula

Of the funds available for FY 1996 for social services, $68,681,700 is proposed to be allocated to States in accordance with the formula specified below. A State's allowable allocation is calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees and Cuban/Haitian entrants who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated and the number of Amerasians from Vietnam eligible for refugee social services, as shown by the ORR Refugee Data System. The resulting per capita amount will be multiplied by—

3. The number of persons in item 2, above, in the State as of October 1, 1995, adjusted for estimated secondary migration.

The calculation above yields the formula allocation for each State. Minimum allocations for small States are taken into account.

IV. Basis of Population Estimates

The population estimates for the proposed allocation of funds in FY 1996 are based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 1995, for estimated secondary migration. The data base includes refugees of all nationalities, Amerasians from Vietnam, and Cuban and Haitian entrants.

For fiscal year 1996, ORR's proposed formula allocations for the States for social services are based on the numbers of refugees and Amerasians who arrived, and on the numbers of entrants who arrived or were resettled, during the preceding three fiscal years: 1993, 1994, and 1995, based on final arrival data by State. Therefore, estimates have been developed of the numbers of refugees and entrants with arrival or resettlement dates between October 1, 1992, and September 30, 1995, who are thought to be living in each State as of October 1, 1995. Refugees admitted under the Federal Government's private-sector initiative are not included, since their assistance and services are to be provided by the private sponsoring organizations under an agreement with the Department of State.

The estimates of secondary migration were based on data submitted by all participating States on Form ORR–11 on secondary migrants who have resided in the U.S. for 36 months or less, as of September 30, 1995. The total migration reported by each State was summed, yielding in- and out-migration figures and a net migration figure for each State. The net migration figure was applied to the State's total arrival figure, resulting in a revised population estimate.

Estimates were developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrant population for each State. Eligible Amerasians are included in the refugee figures.

If a State does not agree with ORR's population estimate and wishes ORR to reconsider its population estimate, it should submit written evidence to ORR, including a list of refugees identified by name, alien number, date of birth, and date of arrival. Listings of refugees who are not identified by their alien numbers will not be considered. Such evidence should be submitted separately from comments on the proposed allocation formula no later than 30 days from date of publication of this notice and should be addressed to: Loren Bussert, Office of Refugee Resettlement, 370 L'Enfant Promenade, S.W., Washington, DC 20447, Telephone: (202) 401–4732.

Table 1, below, shows the estimated 3-year populations, as of October 1, 1995, of refugees (col. 1), entrants (col. 2), and total refugees and entrants (col. 3); the formula amounts which the population estimates yield (col. 4); and the proposed allocation amounts after allowing for the minimum amounts (col. 5).

These population estimates and proposed allocation amounts are intended to be as close to the final figures as was possible at the time they were developed. However, revisions may need to be made to reflect final adjustments in FY 1995 arrival data in some States.

V. Proposed Allocation Amounts

Funding will be contingent upon the submittal and approval of a State annual services plan that is developed on the basis of a local consultative process, as required by § 400.11(b)(2) in the ORR regulations. The following amounts are proposed for allocation for refugee social services in FY 1996:

TABLE 1.—ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND PROPOSED SOCIAL SERVICE FORMULA AMOUNTS AND ALLOCATIONS FOR FY 1996

State	Refugees (1)	Entrants (2)	Total population (3)	Formula amount (4)	Proposed allocation (5)
Alabama	618	62	680	$125,354	$125,354
Alaska [a]	0	0	0	0	0

TABLE 1.—ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND PROPOSED SOCIAL SERVICE FORMULA AMOUNTS AND ALLOCATIONS FOR FY 1996—Continued

State	Refugees (1)	Entrants (2)	Total population (3)	Formula amount (4)	Proposed allocation (5)
Arizona	3,575	416	3,991	735,715	735,715
Arkansas	317	5	322	59,359	100,000
California [b]	78,045	947	78,992	14,561,671	14,561,671
Colorado	3,808	12	3,820	704,193	704,193
Connecticut	2,903	206	3,109	573,124	573,124
Delaware	89	5	94	17,328	75,000
Dist. of Columbia	1,753	10	1,763	324,998	324,998
Florida	13,823	32,158	45,961	8,476,304	8,476,304
Georgia	9,811	192	10,003	1,843,989	1,843,989
Hawaii	758	0	758	139,732	139,732
Idaho	1,086	4	1,090	200,935	200,935
Illinois	12,644	267	12,911	2,380,060	2,380,060
Indiana	1,140	12	1,152	212,364	212,364
Iowa	3,461	4	3,465	638,751	638,751
Kansas	2,112	11	2,123	391,362	391,362
Kentucky [c]	2,301	164	2,465	454,407	454,407
Louisiana	2,030	217	2,247	414,220	414,220
Maine	724	1	725	133,649	133,649
Maryland	6,311	140	6,451	1,189,201	1,189,201
Massachusetts	10,009	164	10,173	1,875,328	1,875,328
Michigan	7,724	187	7,911	1,458,342	1,458,342
Minnesota	9,846	20	9,866	1,818,734	1,818,734
Mississippi	111	32	143	26,361	75,000
Missouri	4,998	22	5,020	925,405	925,405
Montana	182	0	182	33,551	75,000
Nebraska	1,847	6	1,853	341,589	341,589
Nevada [c]	769	732	1,501	276,700	276,700
New Hampshire	686	1	687	126,644	126,644
New Jersey	6,369	1,150	7,519	1,386,080	1,386,080
New Mexico	948	889	1,837	338,639	338,639
New York	60,186	1,116	61,302	11,300,632	11,300,632
North Carolina	3,221	20	3,241	597,458	597,458
North Dakota	1,044	3	1,047	193,008	193,008
Ohio	5,094	20	5,114	942,733	942,733
Oklahoma	1,351	12	1,363	251,260	251,260
Oregon	5,149	273	5,422	999,511	999,511
Pennsylvania	9,762	132	9,894	1,823,896	1,823,896
Rhode Island	656	3	659	121,482	121,482
South Carolina	503	2	505	93,094	100,000
South Dakota	658	0	658	121,298	121,298
Tennessee	3,408	64	3,472	640,041	640,041
Texas	15,885	920	16,805	3,097,895	3,097,895
Utah	1,774	0	1,774	327,026	327,026
Vermont	720	0	720	132,727	132,727
Virginia	5,922	172	6,094	1,123,390	1,123,390
Washington	19,075	20	19,095	3,520,041	3,520,041
West Virginia	27	1	128	5,162	75,000
Wisconsin	5,096	13	5,109	941,812	941,812
Wyoming [a]	0	0	0	0	0
Total	330,329	40,807	371,136	68,416,555	68,681,700

[a] Alaska and Wyoming no longer participate in the Refugee Program.
[b] A portion of the California allocation is expected to be awarded to continue a Wilson/Fish project in San Diego.
[c] The allocation for Kentucky and Nevada is expected to be awarded to continue a Wilson/Fish project.

VI. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance No. 93.566 Refugee Assistance—State Administered Programs)

Dated: April 29, 1996.

Lavinia Limon,

Director, Office of Refugee Resettlement.

[FR Doc. 96–11146 Filed 5–3–96; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Public Advisory Group

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Group.

DATES: June 5, 1996, at 9:00 a.m.

ADDRESSES: First floor conference room, 645 ''G'' Street, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 ''C'' Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The agenda will include a review of current restoration activities and plans for the fiscal year 1997 restoration work plan.

Dated: April 30, 1996.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 96–11232 Filed 5–3–96; 8:45 am]

BILLING CODE 4310–RG–M

Bureau of Land Management

[OR–130–1020–00; GP6–0143]

Eastern Washington Resource Advisory Council; Meeting

AGENCY: Bureau of Land Management, Spokane District.

NOTICE: Notice of Meeting of Standards for Rangeland Health and Livestock Grazing Guidelines Subgroup of the Eastern Washington Resource Advisory Council.

ACTION: Meeting of the Standards for Rangeland Health and Livestock Grazing Guidelines Subgroup of the Eastern Washington Resource Advisory Council; May 21 and 22, 1996, in Palisades, Washington and Ephrata, Washington.

SUMMARY: A meeting of the Standards for Rangeland Health and Livestock Grazing Guidelines Subgroup of the Eastern Washington Resource Advisory Council will be held on May 21 and 22, 1996. The meeting will convene at 12:00 p.m. (noon), May 21, 1996, at the Palisades Grange, Palisades, Washington, 98854. A tour of Bureau of Land Management lands in the area will occur until 5:00 p.m. The meeting will reconvene at 8:00 a.m., May 22, 1996, in Room 218, Bureau of Reclamation Office, 32 ''C'' Street N.W., Ephrata, Washington, 98823. The meeting will continue until 4:00 p.m. or until conclusion business. At an appropriate time, the meeting will recess for approximately one hour for lunch. Public comments will be received from 10:00 a.m. to 10:30 a.m. on May 22, 1996. The topics to be discussed are Standards for Rangeland Health and Livestock Grazing Guidelines.

FOR FURTHER INFORMATION CONTACT: Richard Hubbard, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington, 99212; or call 509–536–1200.

Dated May 1, 1996.

Ann B. Aldrich,

Acting District Manager.

[FR Doc. 96–11285 Filed 5–3–96; 8:45 am]

BILLING CODE 4310–33–P

[ID–990–1020–01]

Resource Advisory Council for Upper Snake River Districts; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council Meeting Locations and Times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM) council meeting of the Upper Snake River Districts Resource Advisory Council will be held as indicated below. The agenda includes the review and consensus of the draft healthy rangeland standards and guidelines. All meetings are open to the public. The public may present written comments to the council. Each formal council meeting will have a time allocated for hearing public comments. The public comment period for the council meeting is listed below. Depending on the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Debra Kovar at the Shoshone Resource Area Office, P. O. Box 2–B, Shoshone, ID, 83352, (208) 886–7201.

DATE AND TIME: Date is May 14, 1996, starts at 10.00 a.m. at the Health and Welfare Regional Office in Twin Falls, Idaho. Public comments from 10:00 a.m.–10:30 a.m.

SUPPLEMENTAL INFORMATION: The purpose of the council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the public lands.

FOR FURTHER INFORMATION: Contact Debra Kovar, Shoshone Resource Area Office, P. O. Box 2–B, Shoshone, ID 83352, (208) 886–7201.

Dated: April 29, 1996.

Joe Kraayenbrink,

Acting District Manager.

[FR Doc. 96–11166 Filed 5–06–96; 8:45 am]

BILLING CODE 4310–GG–P

[NM–010–5700–77/G010–G6–0203; NMNM 95807]

Notice of Realty Action, Proposed Airport Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: On January 31, 1996, the Cuba Regional Economic Development Board (CREDB) filed an application for an airport lease pursuant to the Act of May 24, 1928 (49 U.S.C. 211–214), as amended, for 127.82 acres of public and acquired land located in Sandoval County, New Mexico. On October 25, 1973, a previous airport lease (NMNM 18702) was issued for approximately 127.82 acres which also encompassed the proposed lease area. The land had been continuously leased for airport purposes until October 25, 1993, when the lease expired. The proposed lease area is described as follows:

New Mexico Principal Meridian

Public Land:
T. 20 N., R. 1 W.,
Sec. 20, E½SE¼NE¼ and SW¼SE¼NE¼;
Sec. 21, E½NW¼NW¼ and SW¼NW¼NW¼.
Acquired Land:
T. 20 N., R. 1 W.,
Sec. 20, lot 1;
Sec. 21, N½SW¼NW¼, SW¼SW¼NW¼, and NW¼NW¼SW¼.

The area described contains approximately 127.82 acres.

SUPPLEMENTARY INFORMATION: The land is not required for any Federal purposes. The lease is consistent with current Bureau planning for this area and would be in the public interest. The lease when issued will be subject to the provisions

of the Airport Act of May 24, 1928, and to all applicable regulations of the Secretary of the Interior.

DATES: On January 31, 1996, the date the application was filed, all the above described lands were segregated from all forms of appropriation under the public land laws (except for lease under the Airport Act of May 24, 1928). The public lands were segregated from the operation of the mining laws pending the issuance of such regulations as the Secretary may prescribe. All of the above described lands remain open to the operation of the mineral leasing laws, the material disposal laws and the Geothermal Steam Act.

Until June 20, 1996, interested parties may submit comments to Hector A. Villalobos, Area Manager, Rio Puerco Resource Area, BLM Albuquerque District Office, 435 Montano Road NE., Albuquerque, New Mexico 87107. In the absence of any objections, the decision to approve this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Debby Lucero, Realty Specialist, BLM Rio Puerco Resource Area, 435 Montano Road, NE., Albuquerque, New Mexico 87107, (505) 761–8787.

Dated: April 23, 1996.

Michael R. Ford,

District Manager.

[FR Doc. 96–11158 Filed 5–03 –96; 8:45 am]

BILLING CODE 4310–FB–P

[UT–943–1420–00–269Z]

Filing of Plat of Survey

AGENCY: Bureau of Land Management, UT.

ACTION: Notice.

SUMMARY: These plats of survey of the following described land have been filed in the Utah State Office, Salt lake City, Utah:

Group	Tp.	Rge.	Meridian	Approved	Type
0633	13 S.	02 E.	SLM	95/05/26	Resurvey.
0654	10 S.	01 E.	SLM	95/05/26	Do.
0750	11 S.	14 E.	SLM	95/09/28	Do.
0750	11 S.	15 E.	SLM	95/09/28	Do.
0750	12 S.	14 E.	SLM	95/09/28	Do.
0751	12 S.	12 E.	SLM	95/09/28	Do.
0751	12 S.	13 E.	SLM	95/09/28	Do.
0759	23 S.	05 E.	SLM	95/09/28	Do.
0760	30 S.	03 W.	SLM	95/09/28	Do.
0761	16 S.	02 W.	SLM	95/09/28	Do.
0765	19 S.	26 E.	SLM	95/09/28	Do.
0796	08 S.	19 W.	SLM	95/09/28	Do.
0822	39 S.	10 W.	SLM	95/08/08	Do.
S240	15 S.	03 W.	SLM	95/09/28	Supplemental.

Douglas M. Koza,

Acting State Director.

[FR Doc. 96–11220 Filed 5–3–96; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 C.F.R. 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Amercian Cyanamid, et al.,* Civil Action No. 2:93–0654 (S.D.W.V.), was lodged on April 24, 1996 with the United States District Court for the Southern District of West Virginia.

In the consent decree, the United States settles with 53 parties and various corporate affiliates. Those parties will reimburse $19.26 million of the United States' past costs and perform future soil and groundwater clean-up and closure of an old wastewater treatment plant provided that the clean-ups to be selected are premised upon projected future industrial use of the Site and that the estimates of future costs contained in the EPA Records of Decision not exceed respective thresholds of $45 million for soil and groundwater remediation, and $14 million for the clean-up of the wastewater treatment plant. One defendant, Chemical Associates, separately agrees to reimburse $350,000 of the United States' response costs.

Moreover, in the consent decree, the claims of certain defendants in this action against OHM Remediation Services, Corp. are released and resolved. The United States also releases its claims under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9607 and 9606, and Section 7003 of RCRA, 42 U.S.C. § 6973, against OHM at the Site. OHM in turn releases its cost recovery claims and covenants not to sue the United States for claims that were or could have been asserted in this action by any party to the case arising from response actions at the Site.

The State of West Virginia, on behalf of the West Virginia Department of Environmental Protection (''State''), also is a party to the decree, receiving $1,150,000 in past costs over five years, future oversight costs of $30,000 per year, and $150,000 to resolve state claims for natural resources damages from the settling parties.

The decree also resolves the liability of the United States, on behalf of the Department of Defense, in the case. The United States will pay for portions of four remedy components associated with the WWI era, for a projected total United States payment of approximately $12 million, depending on precise future remedy costs. The decree resolves also the liability of Hercules, the operator of the WWI plant, which will pay $156,790 toward future clean-up of the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed partial consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *American Cyanamid, et at.* Civil Action No. 2:93–0654 (S.D.W.V.), DOJ Ref. #90–11–3–706. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed consent decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed partial consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $40.00 (25 cents per page reproduction costs), payable to the Consent Decree Library. Attachments to the proposed partial consent decree can be obtained for the additional amount of $31.00.

Joel M. Gross,

Chief Environmental Enforcement Section.

[FR Doc. 96–11221 Filed 5–3–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 2, 1996, and published in the Federal Register on February 13, 1996, (61 FR 5571), Orpharm Inc., 728 West 19th Street, Houston, Texas 77008, 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
Methadone (9250)	II.
Methadone-intermediate (9254)	II.
Levo-alphacetylmethadol (9648)	II.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. § 823(a) and determined that the registration of Orpharm Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. § 823 and 28 C.F.R. §§ 0.100 and 0.104, 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: April 29, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–11254 Filed 5–3–96; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 20, 1996, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application, which was received for processing on April 10, 1996, to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Coca Leaves (9040)	II.
Opium, raw (9600)	II.
Opium poppy (9650)	II.
Opium Straw Concentrate (9670)	II.

The firm plans to import the listed controlled substances for the manufacture of bulk pharmaceutical controlled substances.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: April 30, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–11215 Filed 5–3–96; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on March 27, 1996, Research Biochemicals, Limited Partnership, Attn: Richard Milius, 1–3 Strathmore Road, Natick, Massachusetts 01760, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Ibogaine (7260)	I
Tetrahydrocannabinols (7370)	I
Bufotenine (7433)	I
Dimethyltryptamine (7435)	I
Etorphine (except HCl) (9056)	I
Methylphenidate (1724)	II
Pentobarbital (2270)	II
Diprenorphine (9058)	II
Etorphine Hydrochloride (9059)	II
Diphenoxylate (9170)	II
Metazocine (9240)	II
Methadone (9250)	II
Fentanyl (9801)	II

The firm plans to import small quantities of the controlled substances to manufacture laboratory reference standards and neurochemicals.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of

controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: April 30, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–11217 Filed 5–3–96; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on March 14, 1996, Roberts Laboratories, Inc., 4 Industrial Way West, Eatontown, New Jersey 07724, made application to the Drug Enforcement Administration to be registered as an importer of propiram (9649) a basic class of controlled substance listed in Schedule I.

The firm plans to import the propiram to manufacture in bulk for product development.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: April 30, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–11216 Filed 5–3–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 22, 1995, and published in the Federal Register on January 22, 1996, (61 FR 1604), Upjohn Company, 7171 Portage Road, M.L. 2000–41–109, Kalamazoo, Michigan 49001, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of 2,5-Dimethoxyamphetamine (7396), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that this registration of the Upjohn Company to manufacture the listed controlled substance is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistance Administration, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: April 29, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–11255 Filed 5–3–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 96–30; Exemption Application No. D–09904, et al.]

Grant of Individual Exemptions; Aultman Retirement Savings Plan

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Aultman Retirement Savings Plan (the Plan) Located in Canton, Ohio

[Prohibited Transaction Exemption 96–30; Exemption Application No. D–09904]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the guarantee (the Guarantee) by Aultman Health Services Association (the Employer), the sponsor of the Plan, of amounts due the Plan with respect to four guaranteed investment contracts issued by Confederation Life (Confederation Life), including the Employer's potential cash advances to the Plan (the Advances) pursuant to the Guarantee and the potential repayment of the Advances (the Repayments); provided that the following conditions are satisfied:

(A) All terms of the transactions are no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The Plan does not incur any expenses or pay any interest with respect to the transactions;

(C) The Repayments, if any, are restricted to (1) excess Advances made by the Employer, and (2) GIC Proceeds, defined as all amounts actually received by the Plan with respect to the GICs from Confederation Life, any conservator, trustee or person performing similar functions with respect to Confederation Life or acting as surety or insurer with respect to Confederation Life, and/or any state guaranty fund or other entity paying the obligations of Confederation Life with respect to the GICs;

(D) The Repayments will be made only after the Plan has recovered, through the Advances plus GIC Proceeds, the amount guaranteed by the Employer with respect to the GICs; and

(E) To the extent the Advances exceed GIC Proceeds, repayment of the difference will be waived.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on February 13, 1996 at 61 FR 5572.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

C.C.L. Label, Inc. 401(k) Profit-Sharing Plan (the Plan) Located in Grand Rapids, Michigan

[Prohibited Transaction Exemption 96–31; Exemption Application No. D–10168]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Plan of certain publicly traded limited partnership interests (the Interests) to CCL Label, Inc. (CCL), a party in interest with respect to the Plan, provided that the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) the Plan pays no commissions nor other expenses relating to the sale; and (3) the purchase price is the greater of: (a) the fair market value of the Interests as of the date of the sale, or (b) the original acquisition cost of the Interests.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 12, 1996 at 61 FR 10016.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Coin Acceptors, Inc. Savings and Protection Plan (the Plan) Located in St. Louis, Missouri

[Prohibited Transaction Exemption 96–32; Exemption Application No. D–10183]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the past sale by the Plan of certain publicly traded securities (the Securities) to Coin Acceptors, Inc. (Coin Acceptors), a party in interest with respect to the Plan, provided that the following conditions were satisfied: (1) The sale was a one-time transaction for cash; (2) the Plan paid no commissions nor other expenses relating to the sale; (3) the purchase price was the aggregate fair market value of the Securities as of the date of the sale, as determined by the Plan's independent investment manager by reference to the closing prices for the Securities on the New York Stock Exchange (NYSE); and (4) the terms of the sale were at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

EFFECTIVE DATE: The exemption is effective as of September 29, 1995.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 5, 1996 at 61 FR 8686.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Gail L. Belt Self Employed Retirement Plan (the Plan) Located in Vienna, Virginia

[Prohibited Transaction Exemption 96–33; Exemption Application No. D–10219]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of a parcel of real property (the Property) by the Plan to Ms. Gail L. Belt, a disqualified person with respect to the Plan for $115,000, provided the following conditions are satisfied: (a) The sale is a one-time transaction for cash; (b) the Plan pays no commissions or expenses in connection with the transaction; (c) the Plan receives not less than the greater of the fair market value of the Property or its cost in acquiring

the Property; (d) the fair market value of the Property has been determined by a qualified, independent appraiser; and (e) Ms. Belt is the only Plan participant to be affected by the transaction, and she desires that the transaction be consummated.*

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 22, 1996 at 61 FR 11895.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

* Since Ms. Belt is the sole owner of the Plan sponsor and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Signed at Washington, D.C., this 30th day of April, 1996.

Ivan Strasfeld,

Director of Exemption Determination, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 96–11118 Filed 5–3–96; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–10039, et al.

Proposed Exemptions; San Diego National Bank

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

San Diego National Bank Deferred Savings Plan (the Plan)

Located in San Diego, California

[Application No. D–10039]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) The past acquisition by the Plan of certain stock rights (the Rights) pursuant to a stock rights offering (the Offering) by SDNB Financial Corp., a California corporation (the Parent), which wholly-owns and is the parent company of the San Diego National Bank (the Employer), the sponsor of the Plan and a party in interest with respect to the Plan; (2) the

past holding of the Rights during the subscription period of the Offering; and (3) the disposition or exercise of the Rights by the Plan; provided the following conditions are satisfied: (a) The acquisition and holding of the Rights by the Plan occurred in connection with the Offering made available to all shareholders of the common stock of the Parent; (b) all holders of the common stock of the Parent were treated in a like manner, with respect to the Offering, including the Plan; and (c) all decisions regarding the holding and disposition of the Rights by the Plan were made in accordance with Plan provisions for individually-directed investment of participant accounts by the individual participant whose account in the Plan received Rights in the Offering, and if no instructions were received the Rights were sold.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective as of May 30, 1995.

Summary of Facts and Representations

1. The Parent is a registered bank holding company, incorporated in the State of California in 1982, with its principal executive office located in San Diego, California. The principal subsidiary of the parent is the Employer, a national banking association located in San Diego, California and organized in 1981, with deposits that are insured up to the applicable limits by the Federal Deposit Insurance Corporation. Through the Employer the Parent provides general banking services. As of June 30, 1995, the Parent had consolidated assets of approximately $156 million, consolidated liabilities of approximately $145 million (which includes total deposits with the Employer of approximately $125 million), and shareholders equity of approximately $11 million.

As of May 30, 1995, the opening date of the Offering by the parent, there were issued and outstanding 2,048,485 shares of the common stock of the Parent (the Common Stock) held by approximately 800 shareholders, which included 61 participants of the Plan with account balances invested in the Common Stock.

The Common Stock is publicly traded on the National Association of Securities Dealers Automated Quotation National Market System (the NASDAQ). The Rights were also traded on the NASDAQ, with three New York City trading firms making a market in the Rights.

2. The Plan is a defined contribution plan that's intended to satisfy the requirements of sections 401(a) and 401(k) of the Code. The Plan had approximately 106 participants and beneficiaries and total assets of $1,291,916, as of December 31, 1994. Sixty-one of the participants had their individual account balances in the Plan invested in 83,485 shares of the Common Stock, valued at $231,331.79, as of December 31, 1994, and comprising approximately 18 percent of the total assets in the Plan.

The Plan permits participants to contribute up to 10 percent of their respective annual compensation to the Plan and the Employer may match on a discretionary basis any percentage of each contribution by a participant (the Matching Contribution). The last previous match made by the Employer was for the plan year ended December 31, 1990. Also, the employer may make annual-discretionary profit sharing contributions, which have been made in varying amounts for each Plan year through December 31, 1990.

The Plan provides that funding contributions received from Plan participants are immediately vested; and the Matching Contributions and profit sharing contributions from the Employer are vested according to a schedule based on length of service with the Employer by the respective participants. The proceeds received from the sale of the Rights or the Common Stock received from exercising the Rights vested according to the vesting schedule of the Plan.

In connection with the Offering, the Board of Directors of the Employer adopted a resolution on April 26, 1995, authorizing a one-time special match of contributions by the Employer for participants in the Plan who were in the employment of the Employer on April 30, 1995. The amount of the special match was equal to 50 percent of the amount of employee contributions made to the Plan for the period from January 1, 1995, through April 30, 1995. The special match contributed by the Employer totalled $20,657 and was paid in cash and made available for the exercise of the Rights; or, if not so used, the remaining cash was to be invested in the Common Stock.

The Plan permits its participants to direct the investments of their individual accounts among four investment funds (the Funds), which includes one fund primarily invested in shares of the Common Stock (the Parent Stock Fund), and three other funds holding various types of other assets. Also, the Plan allows the participants to elect to establish an individually earmarked account if the participant pays all the fees and other expenses necessary for the establishment and maintenance of such account.

As to investing funding contributions in the Plan, the participant may direct his individual account with respect to (a) the voluntary contributions made by the participant and (b) those voluntary, discretionary contributions made by the Employer from its annual profits. However, the participant may not direct the Matching Contributions of the Employer, other than the limited direction of the one-time special match of April 26, 1995, because the Matching Contributions of the Employer must be invested in the Common Stock.

Participants elect their investment options on written forms that are delivered to the Administrative Committee, which is created by the Board of Directors of the Employer to administer the Plan until successors are appointed. Four individuals from the officers and staff of the Employer currently make up the Administrative Committee. Among their duties is included the selecting of the trustee of the Plan and other professional and administrative aids.

The trustee of the Plan is the Union Bank (the Trustee), a California corporation, located in San Francisco, California, and which is a subsidiary of the Bank of Tokyo, a Japanese corporation.[1] The Trustee acts as custodian of Plan assets, holding legal title to the assets, and executing investment directions received from the Administrative Committee in accordance with the participant's written instructions. The Administrative Committee reviews the investment option forms executed by the participants for possible errors, such as the failure of the participant to sign or give clear instructions.

3. The applicant represents that the Offering was conceived because of an agreement entered into on January 31, 1995, by the Parent with two limited partnerships of which WHR Management Corp. is the general partner (collectively, WHR). The agreement provided that WHR was to purchase by March 28, 1995, 24.9 percent of the Parent's issued and outstanding Common Stock. The purchase was made as agreed with WHR obtaining a total of 510,121 shares of Common Stock for $4.34 per share or for a total sum of $2,213,925.

Since the purchase by WHR at less than the then current book value afforded WHR an opportunity to purchase stock at a price that was unavailable to the existing shareholders

[1] The Trustee is expected to merge in April 1996 with the Bank of California, N.A., located in San Francisco, California, and a subsidiary of Mitsubishi Bank, a Japanese corporation.

through the public market, the Parent decided to make the Offering to all the holders of the Common Stock, with the exception of WHR, at the same price of $4.34 per share that WHR had paid.

However, after the Offering was completed WHR, in order to maintain its parity of 24.9 percent ownership in the Parent, was given the opportunity to purchase from the Parent 255,193 shares of additional Common Stock at $4.34 per share for an aggregate purchase price of $1,107,538.

4. After filing a preliminary Registration Statement (S–3) on March 31, 1995, the Parent commenced on May 30, 1995, the Offering by issuing transferable subscription Rights to the holders of the Common Stock, as of the close of business on May 5, 1995, (the Record Date).[2] One Right was issued for each two shares of Common Stock held by the shareholders, and the number of Rights so distributed was rounded up to the nearest whole Right. Each Right conferred upon its holder an entitlement (the Basic Privilege) to purchase one share of the Common Stock (an Additional Share) at the exercise price of $4.34 per share. Each Right also conferred upon its holder (other than the Plan) a second privilege (the Oversubscription Privilege), allowing the Right holder, who had exercised in full the Basic Privilege, to subscribe for Additional Shares not previously subscribed for in the Basic Privilege. If there were an insufficient number of shares available to satisfy the demands of the Oversubscription Privilege, the available shares would be allocated on a pro rata basis among those requesting the Oversubscription Privilege.

When exercising the Oversubscription Privilege all funds submitted by the holder of the Rights were deposited in an interest bearing, escrow account with the Subscription Agent, the American Transfer & Trust Company. All the interest earned in the escrow account was paid to the Parent. Therefore, the Plan was excluded from participation in the Oversubscription Privilege in order to avoid the prohibited transactions under the Act arising from the payment to the Parent of the interest earned in the escrow account.

In anticipation of the Offering, the Board of Directors of the Employer amended the Plan on May 24, 1995, to permit each Plan participant who had a Plan account invested in the Parent Stock Fund on the Record Date to direct the Trustee to either exercise or sell all the Rights attributable to their involved individual account in the Plan.

Before the amendment of May 24, 1995, the participants of the Plan that were involved in the Offering had no power or authority under the Plan to select investments of the Matching Contributions of the Employer, because these contributions were required to be allocated to the purchase of the Common Stock. With the amendment the Employer acted to permit the involved participants to elect the disposition of all Rights allocated to their individual accounts in the Plan. This decision to provide pass-through elections to Plan participants was to place the involved participants of the Plan in a like position with other shareholders of the Parent who were receiving the Rights. If involved participants failed to make an election before the Election Close-Out Date, or filed an invalid election, they were deemed to have elected to sell their Rights and the Committee instructed the Trustee to sell those Rights in the open market.

The amendment to the Plan on May 24, 1995, also established a procedure for the participant to give instructions with respect to the Offering, and also provided for the one-time special match of contributions to the Plan by the Employer on behalf of participants employed by the Employer on April 30, 1995.

In the initial stages of the Offering which had an expiration date on July 21, 1995, a participant of the Plan could elect to exercise or sell a Right by instructing the Committee to instruct the Trustee at any time until July 12, 1995, (the Election Close-Out Date). The Election Close-Out Date was established to permit sufficient time for the Trustee to liquidate in an orderly manner the assets in the Funds so that the necessary cash would be available to exercise the Rights before the expiration date of July 21, 1995.

Each Plan participant involved in the Offering obtained his funds for the $4.34 exercise price needed to acquire the Common Stock from the following order of priority: (a) First from the one-time special match of the Employer which was based on salary deferrals from January 1, 1995, through April 30, 1995; (b) second from any salary deferrals to the Plan by Plan participants; and (c) third by redeeming investments in the Funds, other than from the Parent Stock Fund, as directed by the participant. Amounts that were redeemed or realized from the sale of assets in the Funds prior to the expiration of the Offering were invested by the Trustee in a short-term investment account, which retained its earnings, pending use for the payment of the exercise price for Additional Shares. Thus, Rights were exercisable by Plan participants only to the extent cash was available from their account balances in the Funds. If cash was not available from the account balances to pay the exercise price for Additional Shares, the Trustee was instructed to sell the Rights not exercised with the proceeds from such sales credited to the account balances of the respective involved participant.

6. All of the Rights were transferable, including those Rights issued in the Oversubscription Privilege; and, although the Offering did not guarantee that a market would develop or remain available during the Offering, the Rights as separate securities from the Common Stock, could be traded on the NASDAQ under their own symbol, SDNBR.

Meetings were held in April 1995 by the Employer to explain to the Plan participants the Offering and its ramifications. The applicant represents that questions from participants generally were concerned with the following: (a) Why the cash used to exercise the Rights was to come only from existing assets allocated to involved participants individual accounts in the Plan, (b) could the Rights held by participants' individual accounts be transferred outside of the Plan to the individual participant; and (c) general questions about contributions to the Plan.

There were 4 Post-Effective Amendments filed with the SEC before the final filing was made effective on September 8, 1995, extending the Offering to September 21, 1995. The second and third Post-Effective Amendments provided, *inter alia* for payment to registered, securities broker-dealers a commission of 5 percent of the aggregate subscription price of the Rights that were exercised through their facilities. Post-Effective Amendment number 4 provided, *inter alia,* for a best-efforts underwriting agreement between the Parent and Torrey Pines Securities, Inc., a California corporation (Torrey Pines). Torrey Pines agreed to act on its best-efforts to underwrite the Offering by soliciting the exercise of the Rights by 3rd parties, and by soliciting the sales of any unsubscribed shares of Common Stock involved in the Offering at a sales price of $4.34.

With the extension of the Offering to September 21, 1995, the involved participants were notified that they had a new Election Close-Out Date of September 19, 1995.

The applicant represents that at the beginning of the Offering the Plan held a total of 42,322 Rights of which 1,634

[2] The Department notes that the Rights do not constitute qualifying employer securities within the meaning of section 407(d)(5) of the Act.

were unallocated because some participants had terminated and were not fully vested in accordance with the vesting schedule set forth in the Plan.[3] This left 40,688 Rights allocated to the individual accounts of the involved participants in the Offering. Four of the involved participants were part of the management of the Employer and 57 were from non-management. The management participants were allocated 30,512 Rights of which they exercised 12,786 Rights at the exercise price of $4.34 for the total sum of $55,491.24. The non-management involved participants were allocated 10,176 Rights of which 26 exercised 3,975 Rights at the exercise price of $4.34 for the total sum of $17,251.50. All of the involved participants exercised the total of 16,761 Rights at the exercise price of $4.34 for a total sum of $72,742.74.

The 4 involved participants from management sold 17,726 Rights and 38 involved participants from non-management sold 6,201 Rights at an average of in excess of $0.01 and less than $0.02 per Right.

The Offering resulted in all the Rights being eventually exercised and the Parent receiving approximately $3,339,986, less underwriting discounts and commissions, for the 769,582 Rights issued in the Offering. In addition WHR purchased an additional 255,193 shares of common Stock for $1,107,538. Thus, the Parent received, from the Offering and the additional purchase by WHR, the total sum of approximately $4,447,524.

The Oversubscription Privilege was exercised for 2,531 shares by two shareholders who were unrelated to the Plan.

7. The applicant represents that the Offering and the resulting transactions were in the best interests of and beneficial to the Plan and its participants and beneficiaries. Also, the applicant represents that the rights of the participants and beneficiaries of the plan were protected in the Offering and subsequent transactions. The applicant demonstrates that all involved participants were adequately notified in advance of the Offering of the procedure for instructing the Trustee of the participant's desires for execution under the Offering, and all instructions given by the involved participants to the Trustee were properly executed. Accordingly, the applicant represents all actions by the Trustee with respect to the Offering were made pursuant to expressed instructions except when the involved participant failed to act or acted in violation of the published procedures and the Rights were sold on behalf of the involved participant. These instructions as to the disposition of the Rights upon the failure of the involved participant to act or to give valid instructions were fully disclosed in the procedural instructions given to the involved participants. The applicant further represents that such instructions were consistent with the nature of participant-directed investments under a Plan.

In addition, the applicant represents that there was no expense incurred by the Plan from the Offering, and there was full disclosure of the Offering in the public documents filed with the SEC.

8. In summary the applicants represent that the transactions satisfied the statutory criteria of section 408(a) of the Act for the following reasons: (a) The acquisition of the Rights by the Plan resulted from an independent act by the Parent as a corporate act and all holders of the Common Stock were treated in a like manner, including the Plan; (b) all decisions with respect to the Rights were controlled by involved participants accounts pursuant to Plan provisions for individually-directed investments of such accounts; (c) the Rights and the Common Stock were both traded on NASDAQ from which current price information was readily ascertainable as were the terms and conditions of the Offering from the public documents distributed to the holders of the Common Stock and filed with the SEC; and (d) there were no expenses incurred by the Plan or its participants and beneficiaries from the Offering and the resulting transactions; and (e) if no instructions were received, the Rights were sold.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Fieldcrest Cannon, Inc. Retirement Savings Plan for Salaried Employees, and Fieldcrest Cannon, Inc. Retirement Savings Plan for Hourly Employees (the Plans) Located in Eden, North Carolina

[Application Nos. D–10180 & D–10181]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 F.R. 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the proposed guaranty (the Guaranty) by Fieldcrest Cannon, Inc. (the Employer), the sponsor of the Plans, of amounts due the Plans with respect to three guaranteed investment contracts (the GICs) issued by Confederation Life Insurance Company (Confederation); (2) the potential extensions of credit (the Advances) to the Plans by the Employer pursuant to the Guaranty; (3) the Plans' potential repayment of the Advances; and (4) the potential purchase of the GICs from the Plans by the Employer for cash; provided the following conditions are satisfied:

(A) All terms and conditions of such transactions are no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties;

(B) No interest and/or expenses are paid by the Plans in connection with the transactions;

(C) The proceeds of the Advances are used solely in lieu of payments due from Confederation with respect to the GICs;

(D) Repayment of the Advances will be restricted to the GIC Proceeds, defined as the cash proceeds obtained by the Plans from or on behalf of Confederation with respect to the GICs;

(E) Repayment of the Advances will be waived to the extent that the Advances exceed the GIC Proceeds; and

(F) In any sale of a GIC to the Employer, the Plans will receive a purchase price which is no less than the fair market value of the GIC as of the sale date, and no less than the GIC's ''Book Value'' as defined below, plus post-maturity interest, if applicable, at the FIF Rate as defined below, less any Advances made pursuant to this exemption and any GIC Proceeds received with respect to the GIC, as of the sale date.

Summary of Facts and Representations

Introduction: The Plans' assets currently include three guaranteed investment contracts (the GICs) issued by Confederation Life Insurance Company (Confederation). Confederation has been placed in receivership and, consequently, payments and withdrawals with respect to the GICs are prohibited. The Plans' sponsor, Fieldcrest Cannon, Inc. (the Employer), proposes to guarantee that in the eventual resolution of the receivership the Plans will recover fully its investments in the GICs, including interest guaranteed under the GICs through their maturity dates and interest

[3] These 1,634 unallocated Rights were then sold, and the proceeds from their sale will be allocated at the end of the Plan year as a forfeiture.

after the maturity dates at a rate described below. The exemption proposed herein would enable this guaranty under the terms and conditions described below.

1. The Plans are defined contribution plans, the assets of which are held in one master trust (the Trust), of which the trustee is Harris Trust and Savings Bank (the Trustee) located in Chicago, Illinois. Both Plans provide for individual participant accounts (the Accounts) and participant-directed investment of the Accounts. The Plans are sponsored by Fieldcrest Cannon, Inc. (the Employer), a Delaware public corporation engaged in the design, manufacture and marketing of a broad range of household textile products, with its principal executive offices in Eden, North Carolina. The Accounts are invested at the directions of individual Plan participants among various investment funds, one of which is the Fixed Income Fund (the FI Fund), which is invested primarily in guaranteed investment contracts issued by insurance companies.

2. Among the assets in the FI Fund are three guaranteed investment contracts (the GICs) issued by Confederation Life Insurance Company (Confederation), a Canadian corporation doing business in the United States through branches in Michigan and Georgia. The GICs are further identified as follows: (a) Contract No. 62388 was issued to the Plans by Confederation effective January 18, 1991, upon an initial principal deposit of $2 million, and it provides for simple annual interest at the rate of 8.74 percent, with a maturity date of January 17, 1996; (b) Contract No. 62499 was issued to the Plans by Confederation effective June 6, 1991, upon an initial principal deposit of $1 million and it provides for simple annual interest at the rate of 8.18 percent, with a maturity date of June 5, 1995; and (c) Contract No. 62710 was issued to the Plans by Confederation effective October 15, 1992, upon an initial principal deposit of $1 million and it provides for simple annual interest at the rate of 6.21 percent, with a maturity date of October 14, 1997. The GICs are single-deposit contracts which permit withdrawals (the Withdrawals) prior to maturity solely for purchasing annuities for retiring Plan participants whose Accounts are invested in the GICs. The terms of the GICs provide that interest at the rates guaranteed by each GIC (the Contract Rates) will be credited to the Plans daily, and will be paid annually (the Interest Payments) on the anniversary of a date specified by each GIC for such Interest Payments. Upon each GIC's maturity date, Confederation is obligated to make a final cash payment to the Plans (the Maturity Payment) in the amount of the GIC's principal plus interest at the Contract Rate, less previous Withdrawals (the Maturity Value). The Employer represents that through July 1994, all payments due under the GICs had been paid.

3. The Employer represents that on August 11, 1994, the Canadian insurance regulatory authorities placed Confederation into a liquidation and winding-up process, and on August 12, 1994, the insurance authorities of the State of Michigan commenced legal action to place the U.S. operations of Confederation into a rehabilitation proceeding. As a result of these actions, all payments and withdrawals with respect to the GICs have been suspended.[4] The Employer represents that it cannot be determined accurately whether, to what extent, or at what time the Withdrawals and Interest Payments will be resumed. The Employer desires to alleviate the Plans' participants of the risks associated with continued investment in the GICs and to prevent any losses of the FI Fund's investments in the GICs. Accordingly, the Employer proposes to guarantee that the Plans will recover all amounts due under the GICs, plus post-maturity interest at a rate described below, and in its discretion to make advances to the Plans, and potentially purchase the GICs, pursuant to this guaranty. The Employer requests an exemption for these transactions under the terms and conditions described herein.

4. The Guaranty: The Employer's proposed guaranty, including the potential advances, repayments of the advances, and potential purchase of the GICs, will be embodied in a written agreement between the Trustee and the Employer (the Agreement). Under the Agreement, the Employer undertakes a guaranty (the Guaranty) that the Plans will recover with respect to each GIC no less than the ''Book Value'' of the GIC through its Maturity Date plus post-maturity interest. The Agreement defines the Book Value of each GIC as (a) The principal amount invested in the GIC, less Withdrawals, plus (b) interest thereon through the Maturity Date at the Contract Rate, plus (c) interest on any unpaid interest due under the GIC (Interest-Payment Interest), from the date such interest payment is due through the Maturity Date, at a rate referred to and defined in the Agreement as the Fixed Income Fund Rate (FIF Rate[5]). The total amount to which the Employer becomes obligated under the Agreement (the Guaranty Amount) with respect to each GIC is the Book Value plus post-maturity interest on the Book Value at the FIF Rate from the GIC's Maturity Date until (a) The entry of a final rehabilitation, liquidation or other similar order by a court of competent jurisdiction regarding Confederation's assets (the Final Order), and (b) the Plans' receipt of the Guaranty Amount from Confederation, state guaranty association funds, or other third parties paying recovery on the GICs (the GIC Proceeds); but in no event later than December 31, 2004.

Accordingly, as each Interest Payment and each Maturity Payment become due under each GIC, the Employer becomes obligated to pay the Plans (not necessarily on the Maturity Date, but in no event later than December 31, 2004, as explained below) the difference between the amount of such payment then due and the amount of GIC Proceeds, if any, actually received by the Plans with respect to such payment due (the Payment Obligation). After an Interest Payment or Maturity Payment is due, the amount of Payment Obligation then assumed by the Employer with respect to such payment earns interest at the FIF Rate set forth in the Agreement. The Agreement requires the Trustee to notify the Employer of the amount of the Payment Obligation upon the Plans' failure to receive in full any Interest Payment or Maturity Payment. As described below in the discussion of ''Advances'', the Employer may from time to time at its discretion make payments of amounts due the Plans under the Agreement, thereby reducing the amount of the outstanding Payment Obligation. However, the Agreement requires that the Plans receive the total Payment Obligation no later than final resolution of the Receivership and in no event later than December 31, 2004. If, by that date, the Plans have not recovered all of the GIC Proceeds which are to be paid with respect to a GIC, the Employer will discharge the Payment Obligation with respect to that GIC by purchasing the GIC from the Plans, as described below in the discussion of ''Potential Purchase''.

[4] The Department notes that the decisions to acquire and hold the GICs are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GICs.

[5] The FIF Rate is defined as a varying rate equal to the rate earned by the money market component of the FI Fund— specifically excluding the GICs— managed by CoreStates Investment Advisers, Inc. or a comparable rate as determined by the Trustee.

The Agreement provides that the Employer's Guaranty obligation with respect to each GIC will continue until, and terminate upon, the earlier of the following events: (a) Payment to the Plans of the Guaranty Amount with respect to the GIC by Confederation or other third parties; (b) the Employer's satisfaction of its Guaranty obligations with respect to the GIC under the Agreement; or (c) transfer of ownership of the GIC to the Employer pursuant to a purchase of the GIC from the Plans, as described below.

5. Advances: The Agreement enables (but does not obligate) the Employer at any time to make cash advances to the Plans (the Advances) and thereby reduce the balance of amounts the Employer owes the Plans under the Guaranty. The Advances are treated under the Agreement as interest-free loans of amounts guaranteed by the Employer under the Agreement. The Employer represents that Advances are anticipated only in the event the Plans encounter unforeseen liquidity problems.

6. Repayments: Under the Agreement the Trustee takes on an obligation to make repayment of the Advances (the Repayments) only in the event the Plans receive GIC Proceeds plus Advances in excess of the Guaranty Amount. The Repayments will be made only from the funds received by the Plans as GIC Proceeds, and the Repayments will be limited to the principal amount of any Advances made by the Employer. However, the Trustee will have no obligation to make Repayments of Advances with respect to any GICs which the Employer purchases, as described below. In such case, any Advances made with respect to the purchased GIC will be credited toward the purchase price.

The Trustee's obligation to make Repayments shall not apply until the entry of the Final Order and the Plans' receipt of all GIC Proceeds which are to be paid. Within sixty days thereafter, the total Repayments shall be made to the Employer by the Trustee in a lump sum or as agreed at that time by the parties. Under the Agreement, in the event the amount of GIC Proceeds with respect to a GIC exceeds the Guaranty Amount, any excess amount shall be retained as earnings of the Plans and allocated to each Plan based on its proportionate interest in the GIC. Under the Agreement the Employer waives Repayments with respect to a GIC to the extent the the total GIC Proceeds is less than the Repayments due under the Agreement. The Employer agrees that the GIC Proceeds shall be the sole source of the Repayments and that it will have no recourse against the Trustee, the Plans or their participants or beneficiaries for the Repayments.

7. Potential Purchase: The Agreement provides that at any time prior to the Plans' recovery of GIC Proceeds totalling an amount equal to the Guaranty Amount, but in no event later than December 31, 2004, the Employer may elect to purchase one or more of the GICs from the Plans. The Agreement further provides that if the Plans have not received full and final recovery of all GIC Proceeds which are to be paid with respect to a GIC by December 31, 2004, the Employer shall be required to purchase that GIC from the Plans. The purchase price of a GIC in either event will be calculated as of the purchase date and will equal the GIC's Book Value plus any Post Maturity Interest at the FIF Rate through the purchase date, less GIC Proceeds and any Advances made with respect to that GIC. The Employer may exercise its purchase option with respect to each GIC separately. To the extent necessary under the terms of the GIC, the Employer must obtain written approval of the transfer from Confederation or its successor.

5. In summary, the Employer represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The transactions will enable the Plans to recover all amounts due under the terms of the GICs, plus post-maturity interest; (2) Repayment of the Advances will be restricted to the GIC Proceeds and will be limited to the principal amount of the Advances; (3) The Repayments will be waived to the extent the Advances exceed the GIC Proceeds; and (4) No interest and/or expenses will be incurred by the Plans with respect to any of the transactions.

FOR FURTHER INFORMATION CONTACT: Ron Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

AmSouth Bancorporation Thrift Plan (the Plan) Located in Birmingham, Alabama

[Application No. D–10185]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) of Guaranteed Investment Contract No. 62531 and Guaranteed Investment Contract No. 62651 (collectively, the GICs), both issued by Confederation Life Insurance of Atlanta, Georgia (Confederation), by the Plan to AmSouth Bancorporation (AmSouth), a Delaware corporation, the sponsor of the plan and a party in interest with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan experiences no losses nor incurs any expenses from the Sale; and (3) the Plan receives as consideration from the Sale an amount, as expressed below in paragraph No. 4, that is equal to the total amount expended by the Plan when acquiring the GICs plus all interest earnings occurring under the terms of the GICs until the date of the Sale.

Summary of Facts and Representations

1. AmSouth, a Delaware corporation incorporated in 1972, is a bank holding company headquartered in Birmingham, Alabama and is the sponsor of the Plan. The issued and outstanding common stock of AmSouth is listed and traded on the New York Exchange. It holds five state banks, of which two are incorporated and located in Alabama, and the remaining three are located and incorporated in Georgia, Florida, and Tennessee, respectively. Through its five wholly-owned subsidiaries, AmSouth offers to the public full commercial banking services in the four respective States.

2. The Plan is a defined contribution profit sharing plan with individual accounts for the respective participants that utilizes a thrift formula and contains a cash or deferred arrangement that is intended to satisfy the qualification requirements of sections 401(a) and 401(k) of the Code. As of September 30, 1995, there were the 5,748 participants in the Plan, and the approximate fair market value of the assets in the Plan was $95,940,526. The GICs had a book value of $2,687,290, as of September 30, 1995, which was approximately 2.8 percent of the total Plan assets.

The Plan offers the participants a choice of four different investment funds (collectively, the Funds) in which they can direct the investment of the assets held in their respective individual accounts. The Funds consist of (a) the Fixed Fund that invests in AmSouth Bank of Alabama's managed collective investment trust, GICs, notes, bills, mortgages or other non-equity

securities, and money-market or other debt obligations; (b) the Equity Fund that invests in common stock and other equity based investments; (c) the Balanced Fund that invests in shares of mutual funds holding a combination of stocks and bonds; and (d) the AmSouth Stock Fund that invests in the common stock of the Employer.

No assets of the plan are invested in loans to the Employer or property leased to the Employer. However, as of December 31, 1994, approximately $13,444,564 or 16.4 percent of the assets of the Plan was invested in common stock of the Employer.

The trustee of the plan is the Trust Division of AmSouth of Alabama (the Trustee), one of the wholly-owned subsidiaries of the Employer, whose officers have investment discretion over selecting for the Plan the Funds in which the participants direct the assets of their respective individual accounts to be invested.

3. The Fixed Fund of the Plan holds the two GICs, which were issued by Confederation on July 15, 1991, and May 20, 1992, respectively, and which are the subjects of the proposed exemption.[6] With respect to the GICs, Contract No. 62531, which matures on July 31, 1996, has a guaranteed annual interest rate of 8.59 percent, and a book value, as of September 30, 1995, of approximately $1,414,166. Contract No. 62651, which matures on May 19, 1997, has a guaranteed interest rate of 7.41 percent, and a book value, as of September 30, 1995, of approximately $1,272,124.

The book value represents the total amount deposited under the terms of the GICs plus accrued interest as provided by the GICs. The aggregated book value of two GICs represents, as of September 30, 1995, approximately 7.3 percent of the total assets in the Fixed Fund. At maturity the total aggregate value of the two GICs would be $2,945,277.

On August 12, 1994, the Ingham County Circuit Court, Lansing, Michigan placed Confederation in conservatorship and rehabilitation, causing Confederation to suspend all payments on its contracts, including the GICs. The applicant represents that it is not known whether, when, or under what circumstances Confederation will resume payments on its contracts, including payment of the interest and the principal on the GICs. Based upon estimates received with regard to the final settlement, the applicant estimates that a settlement of both GICs might pay the Plan between $2,042,977 and $2,338,347. If these estimates are correct, the applicant represents that the participants invested in the Fixed Fund would lose between $606,930 and $902,300; and, additional losses would be experienced because of missed investment opportunities if settlement of the GICs was delayed past their respective maturity dates.

4. In order to eliminate the risk associated with the continued investment in the GICs by the Plan and to allow the Plan to distribute or otherwise invest assets currently invested in the GICs, the Employer proposes to purchase the GICs from the Plan for cash in an amount equal to their book value on the date of the Sale (i.e., the original investment plus the accrued interest provided for by the GICs at the time of Sale).[7] The applicant represents that the elimination of the risks inherent in the continued investment in the GICs by the Plan would be in the best interests of the Plan and its participants and would serve to protect their rights under the Plan. The Plan will incur no expenses or losses from the proposed transaction.

5. In summary, the applicant represents that the proposed transaction will satisfy the criteria for an exemption under section 408(a) of the Act because (a) the Plan will receive from the Employer in a one-time transaction cash equal to the total amount expended by the Plan in acquiring the GICs plus all interest accruing under the terms of the GICs until the date of the Sale; (b) the proposed transaction will enable the Plan and its participants to avoid any risk associated with the continued holding of the GICs; (c) the Plan will not incur any losses or expenses from the proposed transaction; and (d) the Trustee of the Plan has determined that the proposed transaction is in the best interests of the Plan and its participants and would serve to protect their rights under the Plan.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

[6] The Department notes that decisions to acquire and hold the GICs are governed by fiduciary responsibility provisions of Part 4 of Title I of the Act. In this regard, the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GICs.

[7] The applicant represents that there have not been any withdrawals from the GICs.

The Masters, Mates and Pilots Pension Plan (the Pension Plan) and Individual Retirement Account Plan (the IRAP; together, the Plans) Located in Linthicum Heights, Maryland

[Application Nos. D–10198 and D–10199]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the continued holding by the Plans of their shares of stock (the Stock) in American Heavy Lift Shipping Company (AHL), provided that (a) the Plans' independent fiduciary has determined that the Plans' holding of the Stock is appropriate for the Plans and in the best interests of the Plans' participants and beneficiaries; and (b) the Plans' independent fiduciary continues to monitor the Plans' holding of the Stock and determines at all times that such transaction remains in the best interests of the Plans.

TEMPORARY NATURE OF EXEMPTION: If the proposed exemption is granted, the exemption will be effective until the later of: (1) December 31, 1997, or (2) December 31, 1998 provided another application for exemption is filed with the Department prior to December 31, 1997.

Summary of Facts and Representations

1. The Pension Plan is a defined benefit plan that currently has approximately 5,800 participants. As of December 31, 1994, the Pension Plan had approximately $597 million in assets. The IRAP is a defined contribution plan that currently has approximately 4,700 participants. As of December 31, 1994, the IRAP had approximately $86 million in assets. The Plans principally cover members of the International Organization of Masters, Mates and Pilots (the Union).

2. Bear Stearns Fiduciary Services, Inc. (BSFS) is a registered investment advisor which serves as the Named Fiduciary for the Special Assets Portfolio of the Plans. The Special Assets Portfolio consists of various venture capital and other non-liquid investments which were made by a former investment manager of the Plans, Tower Asset Management, Inc. (Tower),

and which were the subject of protracted litigation (the Litigation) between the Department, Tower, the Plans and certain of their trustees, and certain plan participants.[8] The Litigation ultimately was settled pursuant to Court Order entered by the United States District Court for the Southern District of New York (the Court).

3. In the course of the Litigation, BSFS was appointed Named Fiduciary for the Plans' Special Assets Portfolio by Court Order dated September 18, 1990 (the Court Order). BSFS assumed its responsibilities on November 8, 1990. The Court Order provided that the Named Fiduciary, rather than the Plans' trustees, has the ''sole, exclusive, full and complete authority and discretion concerning the control, management and disposition of the Special Assets Portfolio''.

4. Since February 1987, the Plans have each owned 45 shares of the Stock, which Stock represents all of the outstanding shares of AHL. AHL is a Delaware corporation, headquartered in Houston, Texas, that is engaged in the shipping industry. Its principal assets consist of four single-hulled tankers, built in the 1950's, that are used primarily for the transportation of petroleum products in the Jones Act trade (i.e., American-flagged tankers in the domestic intra-coastal trade). The Plans' Stock can be traced back to certain prior investments made by Tower and is held in the Plans' Special Assets Portfolio, along with the Plans' other remaining Tower- initiated investments.

5. Since AHL is an employer of employees covered under the Plans, the Stock constitutes employer securities under section 407(d)(1) of the Act. The applicants represent that the Stock constituted qualifying employer securities within the meaning of section 407(d)(5) of the Act at the time of its acquisition, but as of January 1, 1993, the Stock ceased to be a qualifying employer security because the Stock is wholly-owned by the Plans and thus cannot meet the requirements of section 407(f) of the Act. However, the Plans' continued holding of the Stock was exempt from the prohibited transaction restrictions of the Act pursuant to Prohibited Transaction Class Exemption No. 79–15 as a result of a court order, dated November 2, 1992, entered in the Litigation (the PTE 79–15 Order). Under the terms of the PTE 79- 15 Order, this exemption was effective until the later of: (a) December 31, 1993; or b) December 31, 1994, provided the Plans made application to the Department for an exemption to permit the continued holding of the Stock. The Plans did file a request for an exemption in timely fashion, and thus the exemption provided under the PTE 79–15 Order was automatically extended to December 31, 1994. On December 19, 1994, the Department granted Prohibited Transaction Exemption 94–85 (PTE 94–85; 59 FR 65403), which continued the exemption for the holding of the Stock by the Plans until the later of: (a) December 31, 1995, or (b) December 31, 1996, provided another application for exemption was filed with the Department prior to December 31, 1995. By filing the request which is the subject of the exemption proposed herein, the exemption provided under PTE 94–85 has been automatically extended to December 31, 1996.

6. While BSFS, in its capacity as Named Fiduciary, has ultimate investment management responsibility for the Special Assets Portfolio, it does not exercise investment management discretion over the portfolio's assets on a day-to-day basis. Rather, as contemplated by the Court Order, responsibility for the day-to-day management and supervision of the portfolio's assets has been delegated at all times to independent investment managers selected by BSFS. With respect to the Plans' investment in the Stock, such responsibility was first delegated to Sunwestern Advisors, L.P. (Sunwestern), which served as the investment manager for this investment until July 14, 1992. Effective that date, Sunwestern's responsibilities were assumed by a new investment manager, Potomac Asset Management, Inc. (Potomac), which continues to serve in that capacity.

7. Potomac, a registered investment adviser founded in 1978, is owned by three principals, all of whom are analysts as well as portfolio managers. In addition to the principals, Potomac has an experienced fixed-income manager, equity manager, and corporate finance consultant. In addition to its traditional investment management of $165 million in bond and stock portfolios, Potomac maintains a corporate finance business consisting of private placement consulting and monitoring for pension funds, fair market value analysis for various clients, restructuring and financing of private companies and related activities. Potomac has had experience in managing investments by multi-employer plans in privately-held companies, similar to the situation involving the Plans' investment in the Stock.

8. Potomac represents that aggressive efforts were made by Sunwestern to sell the Plans' Stock in 1991 and 1992. However, by the spring of 1992, the purchase price under discussion with interested parties had fallen to levels near the scrap value of AHL's ships. This was the result of a number of adverse circumstances, including a marked deterioration in the market for AHL's services, the inability of AHL's then-current management to obtain more lucrative term (rather than spot) charters, and the impact of the Oil Pollution Act of 1990 (OPA 1990) on AHL's operations, given the age and single-hull construction of AHL's ships.[9] By the time these sales efforts were discontinued in mid-1992, no bona fide offers for any price above essentially scrap value had materialized. When it became apparent that AHL could not be sold in the short term without essentially forfeiting its going-concern value, Sunwestern and AHL's Board concluded in June, 1992 that they should discontinue the immediate sales effort and, instead, focus their attention on improving profitability and better positioning the company for a future disposition.

9. Shortly thereafter, Sunwestern was replaced as investment manager by Potomac. After conducting its own review of AHL's assets and operations, Potomac also concluded that a focus in the short term on addressing operational problems offered a better opportunity for realizing a reasonable return on the Plans' investment. Since 1992, Potomac has pursued this focus on improving the profitability of AHL's operations (while continuing to explore the possibility of disposition). These efforts resulted in AHL's return to profitability at the end of 1994. As of the end of 1994, Potomac was of the opinion that a sale of AHL on terms favorable to the Plans could not be achieved at that time. No buyers for AHL had appeared, and Potomac believed that a significant reason for the lack of buyer interest was the age of AHL's ships and the impact of OPA 90. Accordingly, Potomac advised BSFS that, in its view, any sale or attempted sale of the Plans' AHL investment at

[8] *In re Masters, Mates and Pilots Pension Plan and IRAP Litigation, Lead File No. 85 Civ. 9545 (VLB) (S.D.N.Y.)*

[9] OPA 90 provides that petroleum products will eventually be transported in United States intra-coastal trade only in double-hulled tankers. Beginning in 1995 and each year thereafter, some single-hulled vessels will be phased out of the domestic petroleum trade, including two AHL vessels in 1996. Thus, OPA 90 has effectively legislated AHL out of the petroleum business by January 1, 1997, unless AHL builds entirely new ships or rebuilds its existing fleet to conform to the new specifications.

that time was not in the Plans' financial interests.

10. However, Potomac and the AHL management were also concerned about the impending obsolescence of the AHL single-hulled tankers (see footnote 2, above). Preliminary analysis suggested that the cost of building a new double-hulled vessel to comply with OPA 90 requirements was approximately $65–70 million and it was unclear that projected charter rates could justify such a capital expenditure. Based on a proposal by Avondale Shipyard Division of Avondale Industries, Inc. of New Orleans, Louisiana (Avondale), one of the nation's leading shipbuilding companies, AHL's Board concluded that it would be more cost effective to rebuild the single-hulled tankers by attaching a new, double-hulled cargo body to the existing vessels. According to Avondale, this would cost approximately 50% less than constructing new ships. Based on its review of the decision of AHL's Board and its own independent analysis, Potomac believed that this potential cost saving (in the range of $30–40 million per ship) represented important potential value for AHL's existing vessels that far exceeded their scrap value and would be attractive to prospective buyers as a possible competitive advantage.

11. Following careful consideration of (i) the technical and financial feasibility of the rebuilding process, (ii) the possibility of federally guaranteed funding by the Federal Maritime Administration (MARAD) under Title XI of the Merchant Marine Act of 1936, and (iii) the absence of alternatives other than the sale of the vessels for their scrap value, Potomac concluded that the rebuilding project was in the financial interest of the Plans. MARAD responded favorably to AHL's initial application and indicated that AHL should act promptly for the guarantee to proceed. Potomac considered MARAD's terms to be extremely favorable to AHL, far more so than commercially available guarantees, and believed MARAD's guarantee would enhance both the projected cashflow and marketability of AHL. MARAD subsequently issued a commitment to AHL to provide a federal MARAD guarantee on an amount up to $139,364,000 of financing (out of a total cost of $159,273,686) to be obtained by AHL to rebuild the four ships. The closing of the MARAD guarantee and the issuance of the federally guaranteed debt occurred in May 1995. Based on the closing of the financing agreements and with the concurrence of Potomac, AHL directed Avondale to proceed with the rebuilding project and entered into a construction contract on May 12, 1995. Design for construction on the new forebody hulls commenced at Avondale shortly thereafter and fabrication of the first hull began in late June, 1995.

12. The applicant represents that the Plans remain committed to selling their interest in AHL. Potomac believes that the contractual commitment that AHL has made to rebuild the ships will enhance the long-term value of the AHL stock. However, even though the financial position of AHL has been enhanced by significant operational reorganization and the potentially valuable financing and construction contracts, Potomac has concluded that a sale of AHL at the present time is unlikely to garner the potential financial benefits resulting from these events. Potomac is of the view that a sale within the forthcoming year is unlikely to yield a price significantly in excess of the scrap value of the vessels, perhaps including a small premium to reflect the valuable contract rights. Accordingly, it has concluded that it is in the Plans' best interests to continue to hold the AHL stock until the rebuilding process is further along.[10]

13. Potomac has based this conclusion on several factors. First, Potomac is of the opinion that the rebuilding process is at a significantly sensitive juncture, and its ultimate success subject to enough uncertainty, that AHL could not be disposed of in the most advantageous way for the Plans at this time. The rebuilding process has recently begun and is not expected to be finished before late 1997, at the earliest. Potomac believes that it will be significantly easier both to identify potential buyers for the Plans' AHL stock and to obtain attractive offers for that stock once it becomes clear to buyers how profitable AHL will be with the rebuilt vessels. Secondly AHL is currently in the midst of labor negotiations, which could impact future labor costs. The removal of uncertainties over these costs and other expense items likewise should place AHL in a better sale posture. Finally, uncertainties surrounding such variables as charter rates and operational expenses should be substantially reduced as the rebuilding process moves further along, and as the date approaches on which the ships can return to operational status.

14. In view of these factors, Potomac does not believe it would be in the best interests of the Plans to liquidate their AHL holdings precipitously. Rather, based on the foregoing considerations, Potomac is of the opinion that a disposition should not be commenced until labor costs and other expense items have been resolved. This will enable prospective buyers to determine how profitable AHL will be and, therefore, how much they will be paying for the Plans' stock. While it is conceivable that this could occur during 1996, Potomac believes that there is a much greater likelihood that this may not occur until late 1997 or even 1998, i.e., the time at which the rebuilding project is expected to have been completed.

15. BSFS represents that its obligations under the Court Order to monitor and report on the activities of the investment managers for the Special Assets Portfolio sharply restrict Potomac's opportunity to perpetuate unduly the Plans' continued ownership of AHL. Pursuant to the investment management agreement with Potomac that BSFS negotiated on behalf of the Plans, Potomac is obligated to supply detailed quarterly reports on each of the Special Assets it manages and to comply with written investment guidelines. Those guidelines state that Potomac ''shall seek, among other prudent objectives, to: (A) Maximize the Plans' net, long-term investment return [and] (B) Liquidate each such investment when and insofar as prudent * * *'' Furthermore, the guidelines require Potomac to prepare and update on a quarterly basis an ''action plan'' for each asset, including AHL. The action plan requires the investment manager to state the timetable for achieving a sale (if sale is intended) or for achieving any other stated objective. In short, BSFS represents that significant mechanisms are in place to prevent Potomac from improperly seeking to continue indefinitely to manage the Plans' Stock in AHL. BSFS represents that in its capacity as Named Fiduciary, it has reviewed in depth Potomac's analysis of the various options available and has accepted Potomac's conclusion that the continued ownership of the Stock is in the best interests of the Plans. BSFS further represents that the applicant has fulfilled, or continues to fulfill all conditions of PTE 94–85. Furthermore BSFS confirms that the Plans have not provided any further investment in AHL, nor guarantees of any financial obligations of AHL. Finally, the applicant represents that the Plans will not provide any such investment or guarantees during the term of the exemption proposed herein, or any future exemption.

16. In summary, the applicant represents that the proposed transaction

[10] Nonetheless, Potomac continues to discuss disposition of the Plans' holdings in AHL with prospective buyers, including venture capital funds.

satisfies the criteria contained in section 408(a) of the Act because: (a) The proposed exemption would continue for a limited period of time a transaction originally permitted by the PTE 79–15 Order and currently by PTE 94–85; (b) the Plans' independent investment manager, Potomac, has reviewed the Plans' holding of the Stock and has determined that it is in the best interest of both Plans to continue holding the Stock; (c) Potomac will continue to monitor the transaction to determine whether it remains in the Plans' best interests to retain the Stock; (d) BSFS, which has the overall responsibility as Named Fiduciary over the Plans' investment in the Stock, has reviewed Potomac's findings and agrees with Potomac's determination that the Plans' continued holding of the Stock is in the best interests of both Plans; and (e) the Plans will make no additional investment in AHL, nor will they guarantee any financing to AHL, for the purpose of double-hulling of the ships.

NOTICE TO INTERESTED PERSONS: The applicant represents that the notice to interested persons required by 29 CFR 2570.43 will be effected by publication of a copy of this notice of proposed exemption and the required supplemental statement in *The Master, Mate and Pilot.* This publication is a newspaper published by the Union and is received by participants and beneficiaries of the Plans, including retirees. The notice will be published within 30 days of the publication of this notice of proposed exemption in the Federal Register. Comments and requests for a public hearing are due within 60 days of the publication of this notice of proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 30th day of April, 1996.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 96–11119 Filed 5–03–96; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

National Industrial Security Program Policy Advisory Committee: Notice of Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2) and implementing regulation 41 CFR 101–6, announcement is made of the following committee meeting:

Name of Committee: National Industrial Security Program Policy Advisory committee (NISPPAC).

Date of Meeting: May 20, 1996.

Time of Meeting: 2:00 p.m. to 4:00 p.m.

Place of Meeting: Davis-Monthan Air Force Base, Building No. 2050 5555 E. Ironwood Street, Tucson, Arizona 85707.

Purpose: To discuss National Industrial Security Program policy matters. The agenda will include a discussion on the current status of the program; discussion and amendment to the NISPPAC bylaws; a report on the implementation of the Executive Order 12958 and 12968, including the status of the financial disclosure form; an update on reporting on security costs; and an update on the most recent draft safeguarding directive.

This meeting will be open to the public. However, due to space limitations and access procedures, the names and telephone numbers of individuals planning to attend must be submitted to the information Security Oversight Office (ISOO) no later than May 15, 1996. Written statements from the public will be accepted in lieu of an opportunity for comment.

FOR FURTHER INFORMATION CONTACT: Steven Garfinkel, Director, ISOO, National Archives Building, 700 Pennsylvania Avenue, NW., Room 100, Washington, DC 200408, telephone (202) 219–5250.

Dated: May 2, 1996.

John W. Carlin,

Archivist of the United States.

[FR Doc. 96–11308 Filed 5–3–96; 8:45 am]

BILLING CODE 7515–01–M

Advisory Committee on Presidential Libraries; Meeting

Notice is hereby given that the Advisory Committee on Presidential Libraries will meet on Wednesday, May 15, 1996, from 1 p.m. to 4 p.m. at the National Archives and Records Administration, 7th Street and Pennsylvania Avenue, NW, Room 105, Washington, DC.

The agenda for the meeting will be foundation activities.

The meeting will be open to the public. For further information, call Lewis J. Bellardo on (301) 713–6410.

This notice is published less than 15 calendar days before the meeting because of scheduling difficulties.

Dated: May 2, 1996.

John W. Carlin,

Archivist of the United States.

[FR Doc. 96–11309 Filed 5–3–96; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL INSTITUTE FOR LITERACY

Advisory Board; Meeting

AGENCY: National Institute for Literacy Advisory Board, National Institute for Literacy.

ACTION: Notice of meeting.

SUMMARY: This Notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National

Institute for Literacy Advisory Board (Board). This notice also describes the function of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATE AND TIME: May 29, 1996, 9:30 a.m. to 4:00 p.m.

ADDRESSES: National Institute for Literacy, 800 Connecticut Avenue, NW., Suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Carolyn Staley, Deputy Director, National Institute for Literacy, 800 Connecticut Avenue, NW., Suite 200, Washington, DC 20006. Telephone (202) 632–1526.

SUPPLEMENTARY INFORMATION: The Board is established under Section 384 of the Adult Education Act, as amended by Title I of Public Law 102–73, the National Literacy Act of 1991. The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board is established to advise and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in the implementation of any programs to achieve the goals of the Institute. Specifically, the Board performs the following functions: (a) makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and Director of the Institute. In addition, the Institute consults with the Board on the award of fellowships. The Board will meet in Washington, DC on May 29, 1996 from 9:30 a.m. to 4:00 p.m. The meeting of the Board is open to the public. The agenda includes discussion of the Institute's strategic planning process and the 1996–97 spending plan. Records are kept of all Board proceedings and are available for public inspection at the National Institute for Literacy, 800 Connecticut Avenue, NW., Suite 200, Washington, DC 20006 from 8:30 a.m. to 5:00 p.m.

Dated: March 30, 1996.

Andrew J. Hartman,

Executive Director, National Institute for Literacy.

[FR Doc. 96–11160 Filed 5–3–96; 8:45 am]

BILLING CODE 6055–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: NRC Form 241, ''Report of Proposed Activities in Non-Agreement States.''

3. The form number if applicable: NRC Form 241.

4. How often the collection is required: NRC Form 241 must be submitted each time an Agreement State licensee wants to engage in or revise its activities involving the use of radioactive byproduct material in a non-Agreement State. The NRC may waive the requirements for filing additional copies of NRC Form 241 during the remainder of the calendar year following receipt of the initial form from a person engaging in activities under the general license.

5. Who will be required or asked to report: Any persons who hold a specific license from an Agreement State and want to conduct the same activity in non-Agreement States under the general license in 10 CFR 150.20.

6. An estimate of the number of responses: The NRC annually receives approximately 4,600 responses from Agreement States associated with NRC Form 241. These responses include 200 initial reciprocity requests on NRC Form 241, and 1,100 revisions and 3,300 clarifications of the information submitted on the forms.

7. The estimated number of annual respondents: 200 Agreement State licensees.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 1,200 hours (16 minutes per response)

9. An indication of whether section 3507(d), Pub. L. 104–13 applies: Not applicable.

10. Abstract: Under the reciprocity provisions of 10 CFR part 150, any Agreement State licensee who engages in activities (use of radioactive byproduct material) in non-Agreement States under the general license in section 150.20 is required to file 4 copies of NRC Form 241, ''Report of Proposed Activities in Non-Agreement States,'' and 4 copies of its Agreement State license at least 3 days before engaging in each such activity. This mandatory notification permits NRC to schedule inspections of the activities to determine whether the activities are being conducted in accordance with requirements for protection of the public health and safety.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library) NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by June 5, 1996: Peter Francis, Office of Information and Regulatory Affairs (3150–0013) NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 25th day of April 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–11181 Filed 5–03–96; 8:45 am]

BILLING CODE 7590–01–P

Agency Information Collection Activities: Submission for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission: Revision.

2. The title of the information collection: NRC Form 313, ''Application for Material License.''

3. The form number: NRC Form 313.

4. How often the collection is required: There is a one-time submittal of information to receive a license. Once a specific license has been issued, there is a 5-year resubmittal of the information for renewal of the license.

5. Who will be required or asked to report: All applicants requesting a license for byproduct or source material.

6. An estimate of the number of responses: 2,669 licensing actions for NRC licensees and 6,922 licensing actions for Agreement State licensees. The NRC has published a final rule, ''One-Time Extension of Certain Byproduct, Source, and Special Nuclear Materials Licenses'' on January 16, 1996, with an effective date of February 15, 1996. This rule implements, on a one-time basis, a 5-year extension of certain byproduct, source, and special nuclear materials licenses. It is expected that approximately 80 percent of NRC licenses will qualify for the one time extension. An 80 percent reduction in the number of anticipated renewals during the OMB clearance period was used in calculating the burdens.

7. The estimated number of annual respondents: Approximately 6,200 NRC licensees and 12,400 Agreement State licensees. This is the total number of licensees which could potentially submit licensing actions.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 18,683 hours for NRC licensees and 48,454 hours for Agreement State licensees (7 hours per response).

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

10. Abstract: Applicants must submit NRC Form 313 to obtain a specific license to possess, use, or distribute byproduct or source material. The information is reviewed by the NRC to determine whether the applicant is qualified by training and experience, and has equipment, facilities, and procedures which are adequate to protect the public health and safety of the public, and minimize danger to life or property.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library) NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by June 5, 1996: Peter Francis, Office of Information and Regulatory Affairs (3150–0120) NEOB–10202. Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 29th day of April 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–11182 Filed 5–3–96; 8:45 am]

BILLING CODE 7590–01–P

Agency Information Collection Activities: Submission for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission: Revision.

2. The title of the information collection: 10 CFR Part 31, ''General Domestic Licenses for Byproduct Material''

3. The form number: Not applicable.

4. How often the collection is required: Reports are submitted as events occur. Registration certificates may be submitted at any time. Changes to the information on the registration certificate are submitted as they occur.

5. Who will be required or asked to report: Persons receiving, possessing, using, or transferring byproduct material in certain items.

6. An estimate of the number of responses: 170 reports from NRC licensees and 340 reports from Agreement State licensees.

7. The estimated number of annual respondents: Approximately 10,126 NRC general licensees and 20,252 Agreement State general licensees.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 2,634 hours for NRC licensees and 5,265 hours for Agreement State licensees.

9. An indication of whether Section 3507(d), Public Law 104–13 applies: Not applicable.

10. Abstract: 10 CFR Part 31 establishes general licenses for the possession and use of byproduct material in certain items and a general license for ownership of byproduct material. General licensees are required to keep records and submit reports identified in Part 31 in order for NRC to determine with reasonable assurance that devices are operated safely and without radiological hazard to users or the public. The revision reflects an overall increase in burden. There has been a decrease in burden for NRC licensees, due to a smaller number of general licensees and fewer reports being filed by general licensees. However, the burden for Agreement State licensees was not included in the previous burden.

A copy of the submittal may be viewed free of charge at the NRC Public

Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library) NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by June 5, 1996: Peter Francis, Office of Information and Regulatory Affairs (3150–0016) NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 29th day of April 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–11183 Filed 5–3–96; 8:45 am]

BILLING CODE 7590–01–P

Agency Information Collection Activities: Submission for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission: Revision.

2. The title of the information collection: 10 CFR Part 33, ''Specific Domestic Licenses of Broad Scope for Byproduct Material.''

3. The form number: Not applicable.

4. How often the collection is required: There is a one-time submittal of information to receive a license. Once a specific license has been issued, there is a 5-year resubmittal of the information for renewal of the license.

5. Who will be required or asked to report: All applicants requesting a license of broad scope for byproduct material and all current licensees requesting renewal of a broad scope license.

6. An estimate of the number of responses: 177 responses from NRC broad scope licensees and 354 responses from Agreement State licensees.

7. The estimated number of annual respondents: 166 NRC broad scope licensees and 332 Agreement State licensees.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 4,425 hours for NRC licensees and 8,850 hours for Agreement State licensees (25 hours per response).

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

10. Abstract: 10 CFR Part 33 mandates requirements for the issuance of a broad scope license authorizing the use of byproduct material. The subparts cover specific requirements for obtaining a license of broad scope. These requirements include equipment, facilities, personnel, and procedures adequate to protect health and minimize danger to life or property.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library) NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by June 5, 1996: Peter Francis, Office of Information and Regulatory Affairs (3150–0015) NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 29th day of April 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–11184 Filed 5–3–96; 8:45 am]

BILLING CODE 7590–01–P

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR Part 26, ''Fitness-for-Duty Programs.''

3. The form number if applicable: Not applicable.

4. How often the collection is required: Once per year and on occasion.

5. Who will be required or asked to report: All licensees authorized to construct or operate a nuclear power reactor and all licensees authorized to possess, use, or transport unirradiated Category 1 nuclear material.

6. An estimate of the number of responses: A reduction of 74 responses (semi-annual to annual report).

7. The estimated number of annual respondents: 74.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 12,582 hours of burden reduction (2,664 hours of reporting burden and 9,918 hours of recordkeeping burden).

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Applicable.

10. Abstract: 10 CFR Part 26, ''Fitness-for-Duty Program,'' requires licensees to

implement fitness-for-duty programs to assure that personnel are not under the influence of any substance or mentally or physically impaired, to retain certain records associated with the management or these programs, and to provide reports concerning the performance of the programs and certain significant events. Compliance with these requirements is mandatory for licensees subject to 10 CFR Part 26.

A proposed revision to 10 CFR Part 26 would modify the information collection requirements to, among other less significant changes, (1) Extend coverage to certain classes of fitness-for-duty programs; (2) require licensees to revise their written policy and procedures to incorporate minor administrative procedures, e.g., Medical Review Officer medical review procedures and changes to various technical guidelines contained in Appendix A of 10 CFR Part 26; (3) require all licensees to obtain information in addition to that currently provided in written form from individuals which would indicate whether the individual has a history of substance abuse; and (4) add fitness-for-duty personnel as a third class of people whose negative acts would be reported.

Submit by June 5, 1996, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by June 5, 1996: Peter Francis, Office of Information and Regulatory Affairs (3150–0146) NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 30th day of April 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–11185 Filed 5–3–96; 8:45 am]

BILLING CODE 7590–01–P

Application for a License To Import Nuclear Waste

Pursuant to 10 CFR 110.70(b) ''Public notice of receipt of an application'', please take notice that the Nuclear Regulatory Commission has received the following application for an import license. Copies of the application are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the Federal Register. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

The information concerning the application follows.

NRC IMPORT LICENSE APPLICATION

Name of applicant, date of application, date received, application number	Description of material		End use	Country of origin
	Material type	Total quality		
Siemens Power Corp., April 2, 1996, April 10, 1996, IW002.	Combustible material contaminated.	1,200 kgs, U 36 kgs, U–235, (5% mca).	Incinerated into ash. Ash will be sold and exported for uranium recovery.	Germany.

For the Nuclear Regulatory Commission.

Dated this 29th day of April 1996 at Rockville, Maryland.

Ronald D. Hauber,

Director, Division of Nonproliferation, Exports and Multilateral Relations, Office of International Programs.

[FR Doc. 96–11187 Filed 5–3–96; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on May 23–25, 1996, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the Federal Register on Monday, November 27, 1995 (60 FR 58393).

Thursday, May 23, 1996

8:30 a.m.–8:45 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 a.m.–10:45 a.m.: IPE Insights Report (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and its consultants regarding the Individual Plant Examination (IPE) Insights Report with emphasis on issues pertaining to safety goals.

Representatives of the nuclear industry will participate, as appropriate.

11:00 a.m.–2:00 p.m.: Proposed Rule on Shutdown Operations (Open)—The

Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed Rule on Shutdown Operations, associated Regulatory Guide, and results of the NRC staff study of shutdown risk at Surry and Grand Gulf nuclear plants.

Representatives of the nuclear industry will participate, as appropriate.

2:00 p.m.–3:30 p.m.: Digital Instrumentation and Control Systems (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and its consultants regarding proposed Standard Review Plan Sections, Regulatory Guides, and Branch Technical Positions associated with digital instrumentation and control systems.

Representatives of the nuclear industry will participate, as appropriate.

3:45 p.m.–4:45 p.m.: Regulatory Review Group Recommendations (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the status of resolution and implementation of the Regulatory Review Group Recommendations.

Representatives of the nuclear industry will participate, as appropriate.

4:45 p.m.–6:15 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting as well as proposed ACRS reports on conformance of operating plants with safety goals, severe accident research, and resolution of the multiple system responses program (MSRP) issues

Friday, May 24, 1996

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–9:15 a.m.: Preparation for meeting with the NRC Commissioners (Open)—Discussion of items of mutual interest for meeting with the NRC Commissioners, including the following:

- Use of IPEs in the regulatory process, PRA framework document, pilot applications, and next step to expand the use of PRA in the regulatory process.
- Fire protection issues, including fire PRA models and PRA-based scoping analysis of degraded fire barriers.
- Proposed final revisions to 10 CFR Parts 50 and 100.
- Status of ACRS review of Regulatory Guidance documents related to digital instrumentation and control systems.
- Status of ACRS review of standard plant designs:

—ABWR and system 80+ design certification rules
—AP600 design
—Test and analysis programs associated with the AP600 and SBWR designs

- Status of ACRS review of conformance of operating plants with NRC safety goals.

9:30 a.m.–11:00 a.m.: Meeting with the NRC Commissioners, Commissioners' Conference Room, One White Flint North (Open)—The Committee will meet with the NRC Commissioners to discuss items of mutual interest, including those noted above.

11:15 a.m.–12:00 Noon: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS staff.

A portion of this session may be closed to discuss the status of appointment of members to the ACRS, organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

1:00 p.m.–1:30 p.m.: Future ACRS Activities (Open)—The Committee will discuss recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

1:30 p.m.–1:45 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports, including the EDO response related to the ACRS report on fire probabilistic risk assessment reports by Brookhaven National Laboratory and certain fire barrier issues.

1:45 p.m.–7:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting as well as proposed ACRS reports on conformance of operating plants with safety goals, severe accident research, and resolution of the multiple system responses program (MSRP) issues.

Saturday, May 25, 1996

8:30 a.m.–11:30 a.m.: Preparation of ACRS Reports (Open)—The Committee will continue discussion of proposed ACRS reports on matters considered during this meeting as well as the proposed reports on other matters noted above.

11:45 a.m.–1:00 p.m.: Strategic Planning (Open)—The Committee will discuss items that are of significant importance to NRC, including rebaselining of the Committee activities for FY 96–97.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on September 27, 1995 (60 FR 49925). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch, at least five days before the meeting, if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Public Law 92–463, I have determined that the portions of this meeting noted above shall be closed pursuant to 5 U.S.C. 552b(c)(2), to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and pursuant to 5 U.S.C. 552b(c)(6), to discuss matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

Further information regarding topics to be discussed, 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 Mr. Sam

Duraiswamy, Chief, Nuclear Reactors Branch (telephone 301/415–7364), between 7:30 a.m. and 4:15 p.m. EDT.

ACRS meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the ''NRC MAIN MENU.'' Direct Dial Access number to FedWorld is (800) 303–9672; the local direct dial number is 703–321–3339.

Dated: April 30, 1996.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 96–11186 Filed 5–3–96; 8:45 am]

BILLING CODE 7590–01–P

Iowa, North Dakota and Utah; Relinquishment of Sealed Source and Device Evaluation Authority and Reassumption by the Commission

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of reassumption of sealed source and device evaluation authority from the states of Iowa, North Dakota, and Utah.

SUMMARY: Notice is hereby given that effective June 1, 1996, the Nuclear Regulatory Commission will reassume regulatory authority for sealed source and device evaluations in the Agreement States of Iowa, North Dakota, and Utah in response to requests from those States to relinquish that authority.

EFFECTIVE DATE: June 1, 1996.

FOR FURTHER INFORMATION CONTACT: Stephen Salomon, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–2368. Internet: SNS@NRC.GOV.

SUPPLEMENTARY INFORMATION: Currently, Iowa, North Dakota, and Utah have agreements with the Nuclear Regulatory Commission (NRC) which grant these States authority to regulate specific categories of radioactive materials formerly regulated by NRC. These agreements have been entered into pursuant to Section 274b of the Atomic Energy Act of 1954, as amended. Recently, the NRC received letters from North Dakota Governor Edward T. Schafer (September 25, 1995), Iowa Governor Terry E. Branstad (January 22, 1996), and Utah Governor Michael O. Leavitt (January 16, 1996), each requesting to relinquish his State's authority to evaluate sealed sources and devices, and that the NRC reassume this authority. The requested NRC action would involve reassertion of regulatory authority by NRC over activities currently regulated by these States pursuant to their agreements with NRC. The Governors note there has been little or no need to conduct such evaluations in the past and given no future prospects for device evaluations, they do not believe they can continue to justify the costs to the State to maintain this authority.

The Commission has agreed to these requests and has notified these Agreement States that effective June 1, 1996, the NRC will reassume authority to evaluate and approve sealed source and device applications within these States. Iowa, North Dakota, and Utah will retain authority to regulate the manufacture and use of sealed sources and devices within the respective State in accordance with its Section 274b agreement with the NRC.

Dated at Rockville, Maryland, this 30th day of April, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 96–11188 Filed 5–3–96; 8:45 am]

BILLING CODE 7590–01–P

Appointments to Performance Review Boards for Senior Executive Service

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Appointment to Performance Review Boards for Senior Executive Service.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has announced the following appointments to the NRC Performance Review Boards.

The following individuals are appointed as members of the NRC Performance Review Board (PRB) responsible for making recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executives:

New Appointees

John T. Larkins, Executive Director, Advisory Committee on Reactor Safeguards/Advisory Committee on Nuclear Waste

In addition to the above new appointments, the following members are continuing on the PRB:

Richard L. Bangart, Director, Office of State Programs

James L. Blaha, Assistant for Operations, Office of the Executive Director for Operations

Stephen G. Burns, Associate General Counsel, Office of the General Counsel

Leonard J. Callan, Regional Administrator, Region IV

Lawrence J. Chandler, Assistant General Counsel, Office of the General Counsel

Bill M. Morris, Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research

Ronald M. Scroggins, Deputy Chief Financial Officer/Controller, Office of the Controller

Elizabeth Q. Ten Eyck, Deputy Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards

Ashok Thadani, Associate Director for Technical Assessment, Office of Nuclear Reactor Regulation

Appointments to Performance Review Boards

The following individuals will continue as members of the NRC PRB Panel that was established to review appraisals and make recommendations to the appointing and awarding authorities for NRC PRB members:

Hugh L. Thompson, Jr., Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, Office of the Executive Director for Operations

Karen D. Cyr, General Counsel, Office of the General Counsel

James L. Milhoan, Deputy Executive Director for Nuclear Reactor Operations, Regulatory Operations, and Research, Office of the Executive Director for Operations

All appointments are made pursuant to Section 4314 of Chapter 43 of Title 5 of the United States Code.

EFFECTIVE DATE: May 6, 1996.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Swanson, Secretary, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555; (301) 415–7103.

Dated at Rockville, Maryland, this 29th day of April 1996.

For the U.S. Nuclear Regulatory Commission.

Carolyn J. Swanson,

Secretary, Executive Resources Board.

[FR Doc. 96–11180 Filed 5–3–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21924; 811–5544]

Canadian Dollar Performance Portfolio L.P.; Notice of Application

April 29, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregulation under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Canadian Dollar Performance Portfolio L.P.

RELEVANT ACT SECTION : Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on July 7, 1995 and amended on April 17, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 24, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 388 Greenwich Street, New York, New York 10013.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Staff Attorney, (202) 942–0571, or Robert A. Robertson, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Delaware limited partnership. On August 17, 1987, applicant registered under the Act and filed a registration statement to register its securities under the Securities Act of 1933. Applicant's registration statement was declared effective on November 9, 1988, and its initial public offering commenced shortly thereafter.

2. On January 7, 1992, in light of applicant's small size and the resulting unlikelihood of achieving economies of scale, the Individual General Partners of applicant unanimously approved a Plan of Dissolution, Liquidation, and Termination (the ''Plan'') providing for the dissolution of applicant, the liquidation of applicant's assets, and the distribution of the proceeds from such liquidation to applicant's unitholders. Proxy materials relating to the Plan were filed with the SEC and distributed to unitholders on or about March 26, 1992. On April 30, 1992, a majority of applicant's unitholders approved the Plan.

3. As of April 30, 1992, applicant had 200,205.41 units of partnership interest outstanding, with a net asset value of $9.95 per unit and an aggregate net asset value of $1,992,053.80. On May 1, 1992, applicant's assets were liquidated and the proceeds of such liquidation, less an amount retained for liabilities, were distributed to applicant's unitholders in an amount based upon applicant's per share net asset value. All sales of portfolio securities were executed in open market transactions through brokers or dealers not affiliated with applicant or its investment adviser.

4. The expenses applicable to the liquidation amounted to approximately $70,824.57. These expenses, which were for accounting, printing, administrative, and legal services, were borne by applicant's investment adviser and administrator. In addition, prior to distribution of applicant's assets, its adviser and administrator contributed to applicant's assets an amount equal to applicant's unamortized organizational expenses.

5. At the time of filing the application, applicant had no assets or liabilities. Applicant has no unitholders and is not a party to any litigation or administrative proceeding. Applicant is not engaged in, and does not propose to engage in, any business activities other than those necessary for the winding-up of its affairs. To effect the dissolution of applicant as a Delaware limited partnership, a certificate of cancellation will be filed with the Secretary of State of the State of Delaware.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–11138 Filed 5–3–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21925; 811–2655]

Cardinal Corporate Income Trust Series 101; Notice of Application

April 29, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Cardinal Corporate Income Trust Series 101.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 27, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 24, 1996, and should be accompanied by proof of service on the application in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 155 East Broad Street, Columbus, Ohio 43215.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. According to SEC records, applicant filed Form N–8A and N–8B to register under the Act on July 28, 1977. Applicant's registration statement on Form S–6 to register its units was declared effective on March 23, 1977.

2. On January 7, 1991, applicant terminated its legal existence under state law, and, on January 29, 1991, applicant made a final cash distribution to its unit holders.

3. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–11139 Filed 5–3–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21926; 811–5286]

Deutsche Mark Performance Portfolio L.P.; Notice of Application

April 29, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Deutsche Mark Performance Portfolio L.P.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on July 6, 1995 and amended on April 17, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 24, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 388 Greenwich Street, New York, New York 10013.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Staff Attorney, (202) 942–0571, or Robert A. Robertson, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Delaware limited partnership. On August 17, 1987, applicant registered under the Act and filed a registration statement to register its securities under the Securities Act of 1933. Applicant's registration statement was declared effective on November 9, 1988, and its initial public offered commenced shortly thereafter.

2. On January 7, 1992, in light of applicant's small size and the resulting unlikelihood of achieving economies of scale, the Individual General Partners of applicant unanimously approved a Plan Dissolution, Liquidation, and Termination (the ''Plan'') providing for the dissolution of applicant, the liquidation of applicant's assets, and the distribution of the proceeds from such liquidation to applicant's unitholders. Proxy materials relating to the Plan were filed with the SEC and distributed to unitholders on or about March 26, 1992. On April 30, 1992, a majority of applicant's unitholder approved the Plan.

3. As of April 30, 1992, applicant had 464,696,91 units of partnership interest outstanding, with a net asset value of $10.22 per unit and an aggregate net asset value of $4,749,213.20. On May 1, 1992, applicant's assets were liquidated and the proceeds of such liquidation, less an amount retained for liabilities, were distributed to applicant's unitholders in an amount based upon applicant's per share net asset value. All sales of portfolios securities were executed in open market transactions through brokers or dealers not affiliated with applicant or its investment adviser.

4. The expenses applicable to the liquidation amounted to approximately $24,486.31. These expenses, which were for accounting, printing, administrative, and legal services, were borne by applicant's investment adviser and administrator. In addition, prior to distribution of applicant's assets, its adviser and administrator contributed to applicant's assets an amount equal to applicant's unamortized organizational expenses.

5. At the time of filing the application, applicant has no assets or liabilities. Applicant has no unitholders and is not a party to any litigation or administrative proceeding. Applicant is not engaged in, and does not propose to engage in, any business activities other than those necessary for the winding-up of its affairs. To effect the dissolution of applicant as a Delaware limited partnership, a certificate of cancellation will be filed with the Secretary of State of the State of Delaware.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–11140 Filed 5–3–96; 8:45 am]

BILLING CODE 8010–01M

[Rel. No. IC–21923; 811–5285]

Managed Currency Portfolio L.P.; Notice of Application

April 29, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Managed Currency Portfolio L.P.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on July 11, 1995 and amended on April 17, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 24, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 388 Greenwich Street, New York, NY 10013.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Staff Attorney, (202) 942–0571, or Robert A. Robertson, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Delaware limited

partnership. On August 17, 1987, applicant registered under the Act and filed a registration statement to register its securities under the Securities Act of 1933. Applicant's registration statement was declared effective on November 9, 1988, and its initial public offering commenced shortly thereafter.

2. On January 7, 1992, in light of applicant's small size and the resulting unlikelihood of achieving economies of scale, the Individual General Partners of applicant unanimously approved a Plan of Dissolution, Liquidation, and Termination (the ''Plan'') providing for the dissolution of applicant, the liquidation of applicant's assets, and the distribution of the proceeds from such liquidation to applicant's unitholders. Proxy materials relating to the Plan were filed with the SEC and distributed to unitholders on or about March 26, 1992. On April 30, 1992, a majority of applicant's unitholders approved the Plan.

3. As of April 30, 1992, applicant had 249,941.79 units of partnership interest outstanding, with a net asset value of $10.38 per unit and an aggregate net asset value of $2,594,406.15. On May 1, 1992, applicant's assets were liquidated and the proceeds of such liquidation, less an amount retained for liabilities, were distributed to applicant's unitholders in an amount based upon applicant's per share net asset value. All sales of portfolio securities were executed in open market transactions through brokers or dealers not affiliated with applicant or its investment adviser.

4. The expenses applicable to the liquidation amounted to approximately $64,317.06. These expenses, which were for accounting, printing, administrative, and legal services, were borne by applicant's investment adviser and administrator. In addition, prior to distribution of applicant's assets, its adviser and administrator contributed to applicant's assets an amount equal to applicant's unamortized organizational expenses.

5. At the time of filing the application, applicant had no assets or liabilities. Applicant has no unitholders and is not a party to any litigation or administrative proceeding. Applicant is not engaged in, and does not propose to engage in, any business activities other than those necessary for the winding-up of its affairs. To effect the dissolution of applicant as a Delaware limited partnership, a certificate of cancellation will be filed with the Secretary of State of the State of Delaware.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–11137 Filed 5–3–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21931; File No. 812–10100]

The Manufacturers Life Insurance Company of America, et al.

April 30, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemptions under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: The Manufacturers Life Insurance Company of America, (''Company''), Separate Account Three of The Manufacturers Life Insurance Company of America (''Account'') and ManEquity, Inc. (''ManEquity'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Section 27(a)(3) of the 1940 Act and Rule 6e–3(T)(b)(13)(ii) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit the front-end sales load imposed under certain flexible premium variable life insurance policies (''Policies'') to be eliminated for payments in excess of one Target Premium in any Policy year.

FILING DATE: The application was filed on April 23, 1996. Applicants represent that they will amend the application during the notice period to conform to the representation set forth herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless a hearing is ordered. Interested persons may request a hearing by writing to the SEC's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on May 21, 1996 and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, The Manufacturers Life Insurance Company of America, 200 Bloor Street East, Toronto, Ontario, Canada M4W 1E5.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Company is a stock life insurance company organized under the laws of the State of Pennsylvania on April 11, 1977 and redomesticated under the laws of Michigan on December 9, 1992. The Company is a wholly-owned subsidiary of Manulife Reinsurance Corporation (U.S.A.), which in turn is a wholly-owned subsidiary of Manufacturers Life, a mutual life insurance company based in Toronto, Canada. The Company is authorized to do business in the District of Columbia and in all states of the United States except the State of New York.

2. The Account was established under Pennsylvania law on August 22, 1986. Since December 9, 1992, the Account has been operated under Michigan law. The assets of the Account fund the Policies and certain other variable life insurance policies issued by the Company. The Account is registered under the 1940 Act as a unit investment trust.

3. ManEquity, an indirect, wholly-owned subsidiary of Manulife Reinsurance Corporation (U.S.A.), is registered with the Commission as a broker-dealer and is a member of the National Association of Securities Dealers, Inc. ManEquity is the principal underwriter for the Policies and for other variable life insurance policies and variable annuity contracts issued by the Company.

4. The Policies are flexible-premium survivorship life insurance policies that permit accumulation of Policy Values on a variable, fixed, or combination of variable and fixed basis. The Company will issue a Policy with a face amount of at least $250,000, and will generally issue Policies only to persons who have not attained age 90.

5. A Policy owner may pay premiums at any time and in any amount, subject to certain limitations. At a Policy's maturity, Policy Value, minus any outstanding Policy loans and unpaid interest thereon, is paid to the Policy owner.

6. Policy Values currently may be allocated among sub-accounts of the Account (''Investment Accounts'') that

invest in nine investment company portfolios of Manulife Series Fund, Inc. and seven portfolios of NASL Series Trust, or may be allocated to a fixed rate (general account) option. Policy Values may be transferred among the Investment Accounts and to and from the fixed rate option, subject to certain restrictions described in the prospectus for the Policies. The Policies also permit asset allocation rebalancing and dollar cost averaging. Policy Values may be accessed by means of partial withdrawals or a total surrender of a Policy, or by taking a Policy loan.

7. The Policies offer a choice of two death benefit options. Under Option 1, the death benefit is the face amount of the Policy or, if greater, the Policy Value multiplied by the corridor percentage applicable for the age of the youngest insured as set forth in the ''Corridor Percentage Table'' which is contained in the prospectus. Under Option 2, the death benefit is the face amount of the Policy plus the Policy Value, or, if greater, the Policy Value multiplied by the corridor percentage applicable for the age of the youngest insured, as set forth in the Corridor Percentage Table. If the Policy is in force at the time of the last surviving insured's death, the Company will pay, upon receipt of due proof of death, an insurance benefit based on the death benefit option selected by the Policy owner.

8. In those states where permitted, the Policies also provide for certain guarantees that a Policy will not go into default, even if a combination of Policy loans, adverse investment experience or other factors should cause the Policy's net cash surrender value to be insufficient to meet the monthly deductions due at the beginning of a Policy month. Depending upon the type of guarantee selected, for additional monthly premiums set forth in the Policy, the amounts of which are based upon (1) the supplementary benefits available under the Policy and selected by the Policy owner and (2) the risk classification of any life insured under the Policy, the Company will provide guarantees against lapse if, as of the beginning of the Policy month, the sum of all premiums paid to date less any partial withdrawals and less any Policy debt is greater than or equal to the sum of the premiums due for the guarantee elected since the Policy Date.

9. The Company deducts a charge of 2.35% of each premium payment for state and local taxes and a charge of 1.25% of each premium payment to reimburse the Company for a portion of its increased federal tax liability in connection with receipt of premiums under the Policies under Section 848 of the Internal Revenue Code of 1986, as amended. The Company currently intends to cease these deductions at the end of the tenth Policy year, but reserves the right to continue these deductions beyond the tenth Policy year.

10. The Policies have a front-end sales load equal to 5.5% of all premiums paid in each Policy year up to one Target Premium;[1] for premium payments in excess of one Target Premium in a Policy year there is no front-end sales charge. This deduction is guaranteed to cease at the end of the tenth Policy year, or ten years after a face amount increase, as applicable. Payments made after ten Policy years, (or, if there has been a face amount increase, ten Policy years after that increase) are not subject to a front-end sales charge.

11. In addition, the Company will assess surrender charges upon the surrender of a Policy, on certain partial withdrawals under a Policy, in the event of a decrease in the face amount of a Policy or a cancellation of an increase, and in the event that a Policy lapses. If applicable, these charges will be assessed if any of these transactions occurs within the applicable surrender charge period as set forth in the Policy. There are two surrender charges: a deferred underwriting charge (''DUC'') and a contingent deferred sales charge (''CDSC'').

12. The DUC is $4 for each $1,000 of face amount of life insurance coverage initially purchased or added by increase. This charge applies only to the first $1,000,000 of face amount initially or the first $1,000,000 of each subsequent increase in face amount. The DUC is designed to cover the administrative expenses associated with underwriting and Policy issuance.

13. The maximum CDSC under the Policies is equal to one Target Premium multiplied by percentages shown in Table 1 of the prospectus for the Policies, which percentage grade down over fifteen Policy years to 0% (but in no event will the sum of the CDSC and the front-end sales charge exceed the amount permitted by Section 27(a)(2) of the 1940 Act). Except for surrenders to which the sales charge limitations provisions described below apply, 100% of the CDSC will be in effect for at least the first six Policy years for lives insured with either an average issue age (or average attained age at the time of a face amount increase) of 0–75. For average ages higher than 75, the CDSC will grade down more rapidly, at a rate that is also set forth in Table 1 of the prospectus.

14. In order to determine the CDSC applicable to a face amount increase, the Company will treat a portion of the Policy Value on the date of increase as a premium attributable to the increase. In addition, a portion of each premium paid on or subsequent to the increase will be attributed to the increase. In each case, the portion attributable to the increase will be the ratio of the GAP for the increase to the sum of the GAPs for the initial face amount and all increases including the requested increase.

15. If a Policy is surrendered or lapsed, or a face amount decrease is requested at any time during the first two years after issuance (for corporate owned Policies) or after an increase in face amount, the Company will forego taking that part of the CDSC with respect to ''premiums'' paid for the initial face amount or that increase (including the portion of Policy Value treated as premiums for the increase, as described above), whichever is applicable, which exceeds the sum of (i) 30% of the premiums paid up to the lesser of one GAP or the cumulative premiums paid to the surrender date, plus (ii) 10% of the premiums paid in excess of one GAP, up to the lesser of two GAPs or the cumulative premiums paid to the surrender date, plus (iii) 9% of the premiums paid in excess of two GAPs, reduced by the amount of all sales charges previously taken.

16. Since a CDSC is deducted when a Policy terminates for failure to make the required payment following a Policy default, the sales charge limitation described above will apply if the termination occurs during the two-year period following issuance or any increase in face amount. If the Policy terminates during the two years after a face amount increase, the limitation will relate only to the CDSC applicable to the increase.

17. A monthly charge (at a minimum rate of $30 per Policy month and a maximum rate of $60 per month) is deducted from the Policy Value for administration of the policies. The monthly administration charge is $.04 per $1,000 of ace amount until the later of the youngest living life insured's attained age 55 or the end of the fifteenth Policy year. Thereafter, the charge is $0.

18. A cost of insurance charge that is guaranteed to be no more than that permitted under the applicable 1980 Commissioners Standard Ordinary Mortality Table is deducted from Policy Value each month. This charge compensates the Company for the death

[1] A Target Premium is a measure of premium specified in a policy that varies from insured to insured and never exceeds a Guideline Annual Premium (''GAP''), as defined in Rule 6e–3(T)(c)(8) under the 1940 Act.

benefits provided under the Policies and varies from insured to insured based upon issue age, gender (except where unisex rates are mandated by law), smoking status and risk class. Cost of insurance rates on amounts added by face increase are based on the same factors, but determined based upon the time of increase instead of issue.

19. A mortality and expense risk charge is deducted from Policy Value at the beginning of each Policy month, at a rate of .067% through the later of the tenth Policy year and the youngest life insured's attained age 55. Currently, it is expected that this charge will reduce to .0215 per month thereafter, although the Company reserves the right not to reduce this charge.

20. Charges will be imposed on certain transfers of Policy Values, including a $35 charge for transfers in any Policy month after the first transfer, a $15 charge for each asset allocation rebalancing transfer and a $5 charge for each dollar cost averaging transfer when Policy Value does not exceed $15,000.

Applicants' Legal Analysis

1. Section 27(a)(3) of the 1940 Act provides that the amount of sales charge deducted from any of the fist twelve monthly payments of a periodic payment plan certificate may not exceed proportionately the amount deducted from any other such payment, and that the amount deducted from any subsequent payment may not exceed proportionately the amount deducted from any other subsequent payment. This prohibition is commonly referred to as the ''stair-step'' rule.

2. Rule 6e–3(T)(b)(13)(ii) provides an exemption from Section 27(a)(3), provided that the proportionate amount of sales charge deducted from any payment does not exceed the proportionate amount deducted from any prior payment.

3. Under the Policies described herein, a Policy owner paying premiums in excess of the Target Premium in any of the first ten Policy years will pay a 5.5% front-end sales load on the portion of the premium up to the Target Premium, but will pay no front-end sales load on premiums about the Target Premium in that year. Applicants submit that this sales load structure could be deemed to violate Section 27(a)(3). In addition, a Policy owner paying more than a Target Premium in any of the first ten Policy years who subsequently makes a premium payment equal to the Target Premium will pay a higher front-end sales in that subsequent Policy year. Consequently, the exemption provided in Rule 6e–3(T)(b)(13)(ii) would be unavailable.

4. According to the Applicants, Section 27 was designed to protect Policy owners against sales load structures that deducted large amounts of front-end sales charges so early in the life of a Policy that little of the Policy owner's early payments were actually invested, or if an owner redeemed in the early years of an investment, that investor would recoup little of his or her investment upon redemption. Applicants assert that the front-end sales load structure under the Policies does not present these concerns. Rather, Applicants state that they expect that by imposing a lower front-end sales load on premiums in excess of the Target Premium, the Company will lower the aggregate level of sales load paid in each of the first ten Policy years (or the first ten years after a face amount increase).

5. Applicants state that the Company's front-end sales load structure significantly benefits Policy owners by eliminating sales charges on payments in excess of Target Premiums in any Policy year. According to the Applicants, the Company could avoid the stair-step issue presented by Section 27(a)(3) and Rule 6e–3(T) simply by imposing a higher front-end load on the full amount of premium payments in each Policy year, including amounts over the Target Premium. Under this arrangement, however, a Policy owner would pay a higher overall sales load, and would be left with a smaller percentage of his or her premium payment for investment under the Policy. Further, if the Company were to impose the higher sales charge on premiums about the Target Premium, it would generate more revenue from the Policies than it believes necessary to support the distribution costs associated with the Policies.

6. Rule 6e–3(T)(b)(13)(ii) contains an exception to its policy prohibiting increases in sales load that allow insurance companies to charge a lower sales charge or amounts transferred to a flexible premium variable life insurance policy from another plan of insurance, and thereafter to impose a full sales charge on later premium payments. Applicants contend that this exception implicitly recognizes that insurance companies incur lower costs on premium payments that consist of amounts transferred from other policies and permits insurance companies to pass those costs savings through to Policy owners. For the same reason, Applicants submit that the Company should be permitted to pass through to Policy owners its reduced costs with respect to premiums about the Target Premium by reducing its front-end sales load on premiums above the Target Premium in each Policy year that a front-end sales load applies.

Conclusion

For the reasons set forth above, Applicants submit that the requested exemptions from the provisions of Section 27(a)(3) of the 1040 Act and Rule 6e–3(T)(b)(13)(ii) thereunder, are in accordance with the standards of Section 6(c) of the 1940 Act, and with the protection of investors and the purposes and policies of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–11231 Filed 5–3–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37149; File No. SR–DCC–96–05]

Self-Regulatory Organizations; Delta Clearing Corp.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to a Change in Interdealer Brokers

April 29, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 17, 1996, Delta Clearing Corp. (''DCC'') 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 primarily by DCC. 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 purpose of the proposed rule change is to revise the procedures for DCC's Over-The-Counter Options Trading System by including in the definition of ''RMJ'' a statement that all references to RMJ in the procedures shall be deemed to be references to the broker then performing the duties and responsibilities of RMJ under the procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DCC included statements concerning the purpose of and basis for the proposed rule change and discussed any

[1] 15 U.S.C. 78s(b)(1) (1988).

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Through its options clearing system, DCC clears trades in over-the-counter options that have been agreed to through the facilities of RMJ Options Trading Corp. (''RMJ'').[3] RMJ has informed DCC that it intends to eliminate its options trading business. The purpose of the proposed rule change is to allow DCC to replace RMJ with Euro Broker Maxcor Inc. The proposed rule change amends the definition of RMJ contained in Article I of the DCC's procedures to state that all references to RMJ in the procedures shall be deemed references to the broker then performing the duties and responsibilities of RMJ under the procedures.

The proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions. Therefore, the proposed rule change is consistent with the requirements of the Act, specifically Section 17A of the Act, and the rules and regulations thereunder.[4]

(B) Self-Regulatory Organization's Statement on Burden on Competition

DCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(e)(4) thereunder[6] in that the proposal effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty 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, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communication 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, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at DCC. All submissions should refer to File No. SR–DCC–96–05 and should be submitted by May 28, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–11141 Filed 5–3–96; 8:45 am]

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[2] The Commission has modified parts of these statements.

[3] For a complete description of the DCC's options clearance system, refer to Securities Exchange Act Release No. 26450 (January 18, 1989), 54 FR 2010 (Order granting DCC temporary registration as a clearing agency).

[4] 15 U.S.C. 78q–1 (1988).

[5] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[6] 17 CFR 240.19b–4(e)(4) (1995).

[7] 178 CFR 200.30–3a(a)(12) (1995).

[Release No. 34–37150; File No. SR–NASD–96–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Requirement That Members Provide Information to Other Regulators for Regulatory Purposes

April 29, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 4, 1996, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change,[2] as described in Items I, II, and III below, which Items have been prepared by NASD. 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 NASD is filing a proposed rule change to amend NASD Rules 8210 and 8220.[3] The NASD is proposing to amend Rule 8210 to require members to provide information to domestic and foreign self-regulatory organizations, associations, securities or contract markets or regulators with which the Association has entered into information sharing agreements for regulatory purposes and to the NASD's Market Surveillance Committee. Pursuant to Amendment No. 1, the NASD is amending Rule 8220 to authorize any Market Surveillance Committee to require any member to submit a report in writing with regard to any matter connected with such member's business or business practices, and to inspect the books, records and accounts of any member. Below is the text of the proposed rule change. Proposed new language is italicized.

[1] 15 U.S.C. 78s(b)(1).

[2] On April 19, 1996, the NASD filed Amendment No. 1 to the proposed rule change. Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Special Counsel, Division of Market Regulation, SEC, dated April 19, 1996.

[3] Pursuant to a new rule numbering system for the NASD Manual anticipated to be effective no later than May 1, 1996, Sec. 5 of Art. IV and the Resolution of the Board of Governors thereto of the Rules of Fair Practice that are the subject of this proposed rule change will become Rules 8210 and 8220, respectively. Securities Exchange Act Release No. 36698 (Jan. 11, 1996), 61 FR 1419 (Jan. 19, 1996) (order approving File No. SR–NASD–95–51).

PROCEDURAL RULES

8000. COMPLAINTS, INVESTIGATIONS AND SANCTIONS

* * * * *

8200. INVESTIGATIONS

8210. Reports and Inspection of Books for Purpose of Investigating Complaints

(a) For the purpose of any investigation, or determination as to filing of a complaint or any hearing of any complaint against any member of the Association or any person associated with a member made or held in accordance with the Rule 9000 Series, *or made or held by another domestic or foreign self-regulatory organization, association, securities or contract market or regulator of such markets, with whom the Association has entered into an agreement providing for the exchange of information and other forms of material assistance solely for market surveillance, investigative, enforcement or other regulatory purposes,* any District Business Conduct Committee, *the Market Surveillance Committee,* or the Board of Governors, or any duly authorized member or members of any such Committees or Board or any duly authorized agent or agents of any such Committee or Board shall have the right:

(1) to require any member of the Association, person associated with a member, or person no longer associated with a member when such person is subject to the Association's jurisdiction to report, either informally or on the record, orally or in writing with regard to any matter involved in any such investigation or hearing, and

(2) to investigate the books, records and accounts of any such member or person with relation to any matter involved in any such investigation or hearing.

(b) No such member or person shall fail to make any report as required in this Rule, or fail to permit any inspection of books, records and accounts as may be validly called for under this Rule. Any notice requiring an oral or written report or calling for an inspection of books, records and accounts pursuant to this Rule shall be deemed to have been received by the member or person to whom it is directed by the mailing thereof to the last known address of such member or person as reflected on the Association's records.

8220. Suspension of members for Failure to Furnish Information Duly Requested

* * * * *

(e) It is essential for the promotion of the Association's welfare, object and purposes and more particularly for the administration and enforcement of its Rules:

(1) that any District Business Conduct Committee, *any Market Surveillance Committee,* or any duly authorized member or members of any such Committees, or any duly authorized agent or agents of any such Committees, or any Association examiner duly authorized by the President shall have the right, in order to and solely for the purpose of determining whether any member is complying with the Rules of the Association:

(A) to require any such member to submit a report in writing with regard to any matter connected with such member's business or business practices, and

(B) to inspect the books, records and accounts of any such member; and

(2) that any such Committee or any such member or members thereof, or any such agent or agents thereof, or any such examiner, be and hereby is granted such rights.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Rule 8210 of the NASD's Procedural Rules provides that the NASD may require members and associated persons to provide information, and may investigate a member's books and records, in connection with investigations or proceedings conducted by the NASD. The NASD periodically receives requests from other regulatory organizations with whom the NASD has entered into agreements to share regulatory information, including self-regulatory organizations (''SROs'') who participate in the Intermarket Surveillance Group (''ISG''),[4] for information from NASD members in connection with investigations being conducted by these regulators. Rule 8210, however, does not expressly permit the NASD to require members to provide information in connection with investigations being conducted by other regulatory organizations, or to bring disciplinary action against a member that refuses to cooperate.

While the NASD believes that Rule 8210 provides adequate authority to require members and associated persons to provide information to other regulatory organizations, it is believed that clarifying this provision to expressly provide for such information sharing would be desirable. Most of the other ISG participants have amended or are amending their rules to clarify their investigatory and information sharing authority.[5] The proposed rule change

[4] The ISG is an organization of securities industry self-regulatory organizations (''ISG/SROs'') formed in 1983 to coordinate and develop intermarket surveillance programs designed to identify and combat fraudulent and manipulative acts and practices. In order to promote its purposes, members agree to exchange such information as is necessary for ISG members to perform their self-regulatory and market surveillance functions. The NASD has been a member of the ISG since its formation.

The ISG's self-regulatory organization members (ISG/SROs) include all of the registered securities exchanges and associations: American Stock Exchange (AMEX), Boston Stock Exchange (BSE), Chicago Board Options Exchange (CBOE), Chicago Stock Exchange (CHX), Cincinnati Stock Exchange (CSE), National Association of Securities Dealers, Inc. (NASD), New York Stock Exchange (NYSE), Pacific Stock Exchange (PSE), and Philadelphia Stock Exchange (PHLX). In addition, other domestic contract markets and foreign SROs have been granted ''affiliate'' membership in the ISG: Alberta Stock Exchange (ASE), Amsterdam Stock Exchange (AMSE), Australian Stock Exchange (ASX), Chicago Board of Trade (CBOT), Chicago Mercantile Exchange (CME), London International Financial Futures and Options Exchange (LIFFE), London Stock Exchange (LSE), Montreal Exchange (ME), New York Futures Exchange (NYFE), Securities and Futures Authority (SFA), Toronto Stock Exchange (TSE), and the Vancouver Stock Exchange (VSE). ISG/SROs and ISG affiliates are referred to herein as ''participants.''

[5] The CBOE recently amended Rule 15.9(b) to require its members and associated persons, at the request of the CBOE, to furnish testimony, documentary evidence or other information in connection with any inquiry by a domestic or foreign self-regulatory organization, association, contract market, or regulator of such market with whom the CBOE has entered into an agreement providing for the exchange of information and other forms of mutual assistance for market surveillance, investigative, enforcement and regulatory purposes. Securities Exchange Act Release No. 35403 (Feb. 22, 1995), 60 FR 10884 (Feb. 28, 1995) (order approving File No. SR–CBOE–94–39). The PSE recently amended Rule 10.2(d) to require PSE members, member organizations, persons associated with a member or member organization, and other persons or entities over whom the PSE has jurisdiction pursuant to Rule 10.1(b) to testify before another SRO and to furnish information in connection with a regulatory inquiry, investigation, examination, or disciplinary proceeding resulting from an agreement entered into by the PSE pursuant to Rule 14.1. Securities Exchange Act Release No. 35646 (Apr. 25, 1995), 60 FR 21227 (May 1, 1995) (order approving File No. SR–PSE–95–02). Currently,

would permit the NASD to require members and associated persons to provide information to any other domestic or foreign SROs, associations, securities or contract markets or regulators of such markets with whom the Association has entered into agreements providing for the exchange of regulatory information. By amending Rule 8210, the NASD also will have explicit authority to discipline members and associated persons who fail to provide information to other domestic or foreign SROs, associations, securities or contract markets or regulators of such markets with whom the NASD has information sharing agreements.

Finally, the NASD is proposing to insert the phrase ''the Market Surveillance Committee'' in that part of Subparagraph (a) of Rule 8210 that references the District Business Conduct Committee and the Board of Governors, and the phrase ''any Market Surveillance Committee,'' after the phrase ''any District Business Conduct Committee'' in Subparagraph (e)(1) of Rule 8220. The change conforms Rules 8210 and 8220 with references to the Market Surveillance Committee in the definitions and relevant titles of the Code of Procedure.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which require, among other things, that the rules of the Association be designed to foster cooperation and coordination with persons engaged in regulating securities transactions. The proposed rule change is consistent with these objectives in that it clarifies that the Association has the authority to require members to provide information to other domestic or foreign self-regulatory organizations, associations, securities or contract markets or regulators of such markets for regulatory purposes and to discipline those members who fail or refuse to provide such information.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–96–14 and should be submitted by May 27, 1996.

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. 96–11228 Filed 5–3–96; 8:45 am]

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NYSE Rule 476(a)(11) permits the NYSE to bring disciplinary action against a member, member organization, allied member, approved person, registered or non-registered employee for failing to comply with an NYSE request to submit books and records to the NYSE or any other SRO and for failure to furnish information to or to appear or testify before the NYSE or other SRO. The NYSE has proposed an amendment to Rules 27, 476(a)(11), and 477 to require persons under Exchange jurisdiction to comply with information requests from commodities markets and associations and foreign self-regulatory organizations and associations. Securities Exchange Act Release No. 36831 (Feb. 12, 1996), 61 FR 6279 (Feb. 16, 1996) (notice of File No. SR–NYSE–95–43). Currently, Art. V, Sec. 4(a) of the AMEX Rules facilitates examinations being conducted by another exchange.

[6] 15 U.S.C. 78o–3.

[Release No. 34–37154; File No. SR–NASD–96–18]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Temporary Extension of Effectiveness of Arbitration Procedures for Large and Complex Cases

April 30, 1996.

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 April 30, 1996,[1] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to temporarily extend the effectiveness of the arbitration Procedures for Large and Complex Cases, Rule 10334 of the Code of Arbitration Procedure (''Code''),[2] to August 1, 1996. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

Code of Arbitration Procedure

* * * * *

Procedures for Large and Complex Cases

Rule 10334

* * * * *

[1] The NASD originally submitted the proposed rule change on April 24, 1996. Amendment No. 1, submitted on April 29, 1996, states that the Board of Directors of NASD Regulation, Inc. authorized the filing of the proposed rule change with the Commission on April 26, 1996. Amendment No. 2, submitted on April 30, 1996, amends Rule 10334(h) to extend the effective date of that Rule to August 1, 1996.

[2] Formerly Section 46 of the Code of Arbitration Procedure, NASD Manual, Code of Arbitration Procedure, Art. III, § 46 (CCH) ¶ 3746.

Temporary Effectiveness

(h) This Section 46 shall remain in effect [for one year from May 2, 1995] *until August 1, 1996* unless modified or extended prior thereto by the Board of Governors.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Procedures for Large and Complex Cases, adopted effective May 2, 1995, for a one-year pilot test and codified at Rule 10334 of the Code (formerly Section 46) will expire on May 2, 1996. Since Rule 10334 became effective, the Rule has been used on occasion by parties to large and complex cases.

In addition, the NASD's Arbitration Policy Task Force, which issued its report on ''Securities Arbitration Reform'' in January 1996, has recommended that the one-year pilot test of Rule 10334 be extended in order to permit the NASD to gather additional data and analyze the low usage rate of the procedures.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[3] because it permits the NASD to continue to specify procedures in the Code for large and complex cases. This serves the public interest by enhancing the satisfaction and perceived fairness of such proceedings by the parties to such proceedings. To the extent the parties to such proceedings express increased satisfaction with the resolution of eligible matters, the goal of providing the investing public with a fair, efficient and cost-effective forum for the resolution of disputes is advanced.

[3] 15 U.S.C. 78*o*–3.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after publication in the Federal Register. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval will benefit users of the arbitration process in that providing a temporary extension of the procedures for large and complex cases will permit arbitration participants to continue to use the procedures until a one-year extension is submitted to the Commission for approval.

Rule 10334 expires by its terms on May 2, 1996. The NASD is asking that the effectiveness of the Rule be temporarily extended until August 1, 1996, in order to permit the NASD to submit a proposed rule change to extend the effectiveness of the rule for one year. In addition, the application of the Rule to any case submitted to arbitration is voluntary. Thus, extending the effectiveness of the Rule will not have any adverse impact on the investing public.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to SR–NASD–96–18 and should be submitted by May 27, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–96–18 be, and hereby is, approved through August 1, 1996.

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. 96–11229 Filed 5–3–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37151; File No. SR–NYSE–96–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Six-Month Extension of Pilot Program To Display Price Improvement on the Execution Report Sent to the Entering Firm

April 29, 1996.

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 April 19, 1996, the New York Stock Exchange, Incorporated (''NYSE'' 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 Organizations's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends for six months the program filed as a pilot in Securities Exchange Act Release Nos. 36421 (October 26, 1995), 60 FR 55625 (November 1, 1995) (File No. SR–NYSE–95–35) and 36489 (November 16, 1995), 60 FR 58123 (November 24, 1995) (File

No. SR–NYSE–95–37). This is a program to calculate and display, on the execution reports sent to member firms, the dollar amounts realized as savings to their customers as a result of price improvement in the execution of their orders on the Exchange.

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 purpose of this proposed rule change is to extend for six months a pilot program for calculating and displaying, on execution reports sent to member firms entering orders, the dollar value saved by their customers as a result of price improvement of orders executed on the Exchange. The program does not in any way affect the actual execution of orders. The Exchange refers to this calculated dollar savings as the ''NYSE PRIME[SM].''

NYSE PRIME is available to all member organizations [1] for intra-day market orders entered via the Exchange's SuperDOT system that are not tick-sensitive and are entered from off the Floor.[2] In calculating the dollar value of price improvement, NYSE PRIME utilizes the Best Pricing Quote (''BPQ'') as approved by the Commission in connection with the Exchange's pricing of odd-lot orders.[3]

Data from the operation of the pilot during the first quarter of 1996 show price improvement on 25.6% of the execution reports for eligible post-opening market orders entered on the Exchange. The Exchange believes that the NYSE PRIME enhances the information made available to investors and improves their understanding of the auction market.

The initial NYSE PRIME pilot program was commenced on October 24, 1995 [4] and ran until April 24, 1996. The proposed rule change extends the pilot program for an additional six months, to October 24, 1996.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [5] that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. This proposed rule change is designed to perfect the mechanism of a free and open market in that it enhances the information provided to investors by displaying to them the dollar value of the price improvement their orders may have received when executed on the NYSE.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting access to or availability of any Exchange order entry or trading system, the NYSE PRIME program has become effective pursuant to Section 19(b)(3)(A) of the Act [6] and subparagraph (e)(5) of Rule 19b–4 thereunder.[7] At any time within 60 days of the filing of such 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 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 Exchange. All submissions should refer to File No. SR–NYSE–96–10 and should be submitted by May 28, 1996.

[SM] NYSE PRIME is a service mark of the New York Stock Exchange, Inc.

[1] The Commission notes that member organizations electing to receive NYSE PRIME information are required to enter into an agreement with the Exchange regarding the use of NYSE PRIME information and the NYSE PRIME service mark. Among other things, the agreement provides that in any publication or use of NYSE PRIME information (unless the Exchange otherwise agrees), the member organization must employ the NYSE PRIME service mark.

As of April 29, 1996, the following NYSE member organization are receiving and utilizing NYSE PRIME information: Merrill Lynch, Pierce, Fenner, and Smith, Inc.; Charles Schwab & Co., Inc.; and Kalb, Voorhis & Co.

[2] Also excluded from the NYSE PRIME feature are booth entered or booth routed orders, booked orders, combination orders (*e.g.*, switch orders) and orders diverted to sidecar.

[3] *See* Securities Exchange Act Release No. 27981 (May 2, 1990), 55 FR 19407 (May 9, 1990) (File No. SR–NYSE–90–06). The BPQ is the highest bid and lowest offer, respectively, disseminated by the Exchange or another market center participating in the Intermarket Trading System (''ITS'') at the time the order is received by the Exchange. In order to protect against the inclusion of incorrect or stale quotations in the BPQ, however, the Exchange includes quotations in a stock from other markets only if: (1) the stock is included in ITS in that other market; (2) the quotation size is for more than 100 shares: (3) the bid or offer is not more than one-quarter point away from the NYSE's bid or offer; (4) the quotation conforms to NYSE Rule 62 governing minimum variations; (5) the quotation does not create a locked or crossed market; (6) the market disseminating the quotation is not experiencing operational or system problems with respect to the dissemination of quotation information; and, (7) the quotation is ''firm'' pursuant to Rule 11Ac1–1 under the Act, 17 CFR 240.11Ac1–1, and the market's rules.

[4] *See* NYSE Notice to Members (November 17, 1995).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(e)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–11143 Filed 5–3–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37148; File No. SR–PSE–96–02]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Composition of the Exchange's Options Listing Committee

April 29, 1996.

I. Introduction

On January 16, 1996, the Pacific Stock Exchange, Inc. (''PSE'' or ''Exchange'') filed with 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 proposal to amend its rules relating to the composition of the Options Listing Committee (''OLC''). On March 11, 1996, the PSE amended its approval.[3]

The proposed rule change and Amendment No. 1 were published for comment in the Federal Register on March 25, 1996.[4] No comments were received on the proposed rule change.

II. Description of the Proposal

Currently, Commentary .01 to PSE Rule 11.10(d) provides that the OLC shall be comprised of (i) four floor brokers; (ii) five market makers or lead market makers; and (iii) one member of the PSE or a general partner or officer of a member organization, or any other person who is considered to be qualified. The PSE proposes to amend PSE Rule 11.10(d), Commentary .01, to provide that the Exchange will attempt, but will not be required, to maintain the composition of the OLC as provided currently under Commentary .01. Specifically, the Exchange proposes to amend Commentary .01 by eliminating the phrase ''shall be comprised of'' and replacing it with a provision stating that ''attempts shall be made'' in order for the OLC to have a composition that includes those currently specified in subsections (i) through (iii).

The Exchange believes that Commentary .01 is overly restrictive and that the proposal is appropriate in order to allow for greater flexibility in the committee selection procedure and the process for replacing committee members who resign or change their floor status. The proposal is designed to make Commentary .01 easier to follow and to prevent members from appealing decisions of the OLC on the grounds that the OLC was not authorized to act because its composition did not conform to the requirements of Commentary .01. The PSE represents that the Exchange will make every effort to ensure that the OLC maintains the composition specified in Commentary .01. The Exchange expects that, under the proposal, the composition of the OLC will remain as specified currently in Commentary .01 in virtually all circumstances.[5]

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 Section 6(b)(3) of the Act, in that the proposal provides for a fair representation of the Exchange's members in the administration of its affairs, and also with Section 6(b)(5) of the Act, in that the proposal is designed to protect investors and the public interest.[6]

The Commission believes that the proposal will allow greater flexibility in the composition of the OLC. Specifically, the proposal provides that the Exchange will attempt, but will not be required, to maintain the composition of the OLC as provided currently under PSE Rule 11.10(d), Commentary .01. The PSE expects that the OLC will continue to be composed as provided currently in Commentary .01 in virtually all circumstances, and the PSE represents that the Exchange will attempt to ensure that the composition of the OLC remains as specified in Commentary .01.[7] Accordingly, the Commission believes that the proposal will provide flexibility in the composition of the OLC while ensuring that diverse interests are represented on the OLC. In addition, the proposal should simplify the process of replacing a member who resigns from the committee and allow the OLC to retain a member who changes his status (*e.g.*, a floor broker who becomes a maker) during his service on the committee.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–PSE–96–02) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–11142 Filed 5–3–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37152; File No. SR–PTC–96–02]

Self-Regulatory Organizations; Participants Trust Company; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Establishing on a Permanent Basis the Margin and Pricing Methodology for Collateralized Mortgage Obligations

April 30, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 8, 1996, the Participants Trust Company (''PTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–PTC–96–02) as described in Items I and II below, which Items have been prepared primarily by PTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1995).

[3] On March 11, 1996, the PSE provided additional information concerning the purpose of the proposal. Specifically, the PSE explained that the proposal is designed to make Commentary .01 to PSE Rule 11.10(d), ''Options Listing Committee,'' easier to follow and to prevent legal appeals of Options Listing Committee (''OLC'') decisions on the technical argument that the OLC was not authorized to act because its composition did not conform to the rigid requirements of PSE Rule 11.10(d), Commentary .01. According to the PSE, such an appeal could be made currently if, for example, a non-floor broker is placed in one of the floor broker slots on the OLC because of a shortage of floor brokers willing to serve on the OLC, or if a floor broker on the OLC becomes a market maker mid-year and the OLC decides to retain that member on the OLC. The PSE expects that, under the proposal, the OLC will be composed as specified in Commentary .01 under virtually all circumstances. The Exchange represents that it intends to comply with the spirit of the Commentary and anticipates departures from this general rule only in exceptionally rare circumstances. *See* Letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Michael Walinskas, Branch Chief, Options Regulation, Division of Market Regulation, Commission, dated March 11, 1996 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 36984 (March 18, 1996), 61 FR 12126.

[5] *See* Amendment No. 1, *supra* note 3.

[6] 15 U.S.C. §§ 78f(b)(3) and (b)(5) (1988).

[7] *See* Amendment No. 1, *supra* note 3.

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1995).

[1] 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes on a permanent basis the margin and pricing methodology utilized by PTC for collateralized mortgage obligations (''CMOs'') that are eligible for deposit or that may become eligible for deposit at PTC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PTC 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. Summaries of the most significant aspects of such statements are set forth in sections A, B, and C below.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish a permanent methodology to formulate the percentage (*i.e.*, margin) to be deducted from the market value of CMOs that are eligible for deposit or that may become eligible for deposit at PTC.[3] The proposed margin and pricing methodology is substantially the same as the current margin and pricing methodology except for one variation that is proposed as a result of PTC's research and analysis of additional data compiled in the period since the temporary approval was granted.

Margin under PTC's Rules

Under PTC's rules, a certain percentage (''applicable percentage'') of the market value of securities is included in the computation of participants' Net Free Equity.[4] Net Free Equity represents PTC's calculation of the amount of excess equity available in a participant's account which PTC may borrow against or liquidate in the event a participant's debit balance is not satisfied at the end of the day. Net Free Equity of zero or greater is required to be maintained by participants in each of its agency, pledge, or proprietary accounts in order for transactions to be processed.[5]

By including only a portion of the market value of securities in Net Free Equity, PTC attempts to limit the risk caused by fluctuations in the market value of these securities. For example, for Government National Mortgage Association (''GNMA'') single-class securities other than construction, project, and mobile home securities, margin is set at five percent, which is a rate that exceeds these securities' largest historic consecutive two-day downward price movement. GNMA construction, project, and mobile home securities have a higher margin to reflect their reduced liquidity.[6]

CMO Margins

CMOs that are currently eligible for deposit at PTC are GNMA REMICs, Department of Veterans Affairs (''VA'') REMICs, and certain Federal Home Loan Mortgage Corporation (''FHLMC'') and Federal National Mortgage Association (''FNMA'') REMICs. Unlike GNMA single-class securities, CMOs are multiple-class mortgage cash flow securities which redirect the cash flow from an underlying standard mortgage-backed security, such as a GNMA security, and which allow the CMO issuer to create classes or tranches with many different interest rates, average lives, prepayment sensitivities, and final maturities.

To establish margins for CMOs, PTC uses a model which takes into account the unique characteristics of each tranche to predict its potential price movement. The parameters of the model include the current price of the security, the prepayment assumptions, and the corresponding Treasury yield curve. PTC subjects each CMO tranche to a stress test to determine its response to yield changes in order to assign each tranche an appropriate margin.

Currently, margins are based on a fifty basis point upward movement in the yield of the underlying Treasury securities for CMO tranches that exhibit positive effective duration (*i.e.*, tranches which rise in value with falling interest rates) or a fifty basis point downward movement in the yield of the underlying Treasury security for CMO tranches that exhibit negative effective duration (*i.e.*, tranches which decline in value with falling interest rates). CMO tranches that are not modeled by PTC's pricing vendors are margined at one hundred percent, and the minimum margin for any CMO tranche is five percent.

All margins are reevaluated at least quarterly. In addition, margins are reevaluated any time there is a shift of one hundred basis points or more on any point of the Treasury yield curve for the applicable CMOs and for any CMOs that experience a one-day price decrease in excess of fifty percent of the assigned margin.

Proposed New Margin Methodology

Because PTC anticipates that additional issues of FHLMC and FNMA CMOs may become eligible for deposit at PTC, it has extended its analysis of historical shifts in Treasury yield decreases. As a result of this analysis, PTC proposes to increase the basis points used for margin calculation for CMOs that exhibit negative effective duration from fifty basis points to one hundred basis points.[7] Therefore, PTC has requested permanent approval of its methodology to establish margins for CMOs based upon the maximum percentage decrease resulting from a fifty basis point upward movement in the yield of the underlying Treasury security for CMO tranches that exhibit positive effective duration or a one hundred basis point downward movement in the yield of the underlying Treasury security for CMO tranches that exhibit negative effective duration.

[2] The Commission has modified the text of the summaries prepared by PTC.

[3] PTC's current CMO margin and pricing methodology was approved by the Commission on a temporary basis through April 30, 1996, in order to allow PTC to make technical enhancements that enabled PTC to use and compare data from two pricing vendors and also enabled PTC to further evaluate the results of the CMO pricing and margin methodology as enhanced. Securities Exchange Act Release No. 35641 (April 24, 1995), 60 FR 21228 [File No. SR–PTC–95–03] (order approving proposed rule change on an accelerated basis).

[4] As set forth in PTC Rules, Article II, Rule 9, Net Free Equity is calculated as the sum of (a) the cash balance in the account; (b) the market value of securities in the account less the applicable percentage; (c) the value of the optional deposits to the Participants Fund which are allocated to that account (optional deposits to the Participants Fund are deposits that exceed the minimum deposit required pursuant to PTC's rules and procedures); and (d) 20% of the mandatory deposits to the Participants Fund for the master account (mandatory deposits to the Participants Fund are minimum deposits required to be deposited into such fund pursuant to PTC's rules and procedures) minus (e) ''reserve on gain.'' Reserve on gain means (1) the contract value credited to the cash balance of a delivering participant or limited purpose participant over the market value of securities credited to the transfer account associated with the account of the receiving participant or (2) the market value of securities credited to the transfer account associated with the account of a receiving participant over the contract value credited to the cash balance of the delivering participant or limited purpose participant.

[5] PTC Rules, Article II, Rule 13, ''Transfers of Securities.''

[6] Securities Exchange Act Release No. 33840 (March 31, 1994), 59 FR 16672 [File No. PTC–93–04] (order approving proposed rule change).

[7] One hundred basis points corresponds to the largest actual decrease in Treasury yields over the most current ten year period. The largest actual decrease in Treasury yields over the most current ten year period occurred when the two-year Treasury yield declined 99.5 basis points between the days before and after the stock market break on October 19, 1987 (comparing Friday, October 16, 1987, with Tuesday, October 20, 1987).

The increase in the basis points used for CMOs that exhibit negative effective duration does not affect the margins of the CMOs currently on deposit at PTC because the CMO tranches that would decline in value assuming a one hundred basis point decline in the yield of the underlying Treasury security are interest only (''IO'') tranches or tranches which have IO like characteristics. These securities are not currently priced by PTC's pricing vendors and accordingly are assigned a value of zero on PTC's system.[8] However, PTC anticipates that as additional issues become depository eligible at PTC and PTC's pricing vendors are able to provide prices for such issues, some of these issues may include tranches which are sensitive to a one hundred basis point decline.

PTC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[9] and the rules and regulations thereunder because it facilitates the prompt and accurate clearance and settlement of securities transactions and provides for the safeguarding of securities and funds in PTC's custody or control or for which PTC is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

PTC does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

PTC has discussed the proposed margin methodology with its Risk Management Committee, which is comprised of participant representatives. PTC has neither solicited nor received written comments from participants or other interested parties on this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[10] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible. The Commission believes that the proposed margin and pricing methodology utilized by PTC for CMOs is consistent with this obligation.

The Commission previously approved PTC's current margin and pricing methodology for CMOs on a temporary basis in order to allow PTC further time to evaluate the methodology and to take steps to address any concerns which existed with respect to the methodology. During the temporary approval period, PTC has provided information to the Commission describing the steps taken by PTC to improve the margin and pricing methodology including finalizing arrangements with a second pricing vendor for daily pricing and stress test analysis. Because PTC believes it has made all the changes that its research and analysis conducted during the temporary approval period revealed needed to be made, PTC has decided to request permanent approval of the margin and pricing methodology.

PTC's margin and pricing methodology helps ensure that in establishing CMO margins, PTC takes into account the unique characteristics of each CMO tranche. Furthermore, PTC's reliance on two pricing sources should provide PTC with timely and accurate price information. The resulting margins established for CMOs that are eligible for deposit or that may become eligible for deposit at PTC should afford PTC sufficient protection in the event it becomes necessary for PTC to borrow against or liquidate these assets to satisfy a participant's debit balance that is not satisfied at the end of the day. In addition, increasing the basis points used in calculating margins for CMOs that exhibit negative effective duration from fifty basis points to one hundred basis points should result in more conservative margins for these securities and thereby should help to limit PTC's risk resulting from fluctuations in the market values of these securities.

PTC 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 such good cause for so approving the proposed rule change because accelerated approval will allow PTC to continue employing its margin and pricing methodology without disruption of service prior to the expiration of the current temporary approval on April 30, 1996. Furthermore, the Commission did not receive any comment letters during the comment period before it granted temporary approval or during the temporary approval period and does not expect to receive any during the present comment period. The staff of the Board of Governors of the Federal Reserve System (''Board of Governors'') has concurred with the Commission's granting of accelerated approval.[11]

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 PTC. All submissions should refer to file number SR–PTC–96–02 and should be submitted by May 27, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–PTC–96–02) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–11230 Filed 5–3–96; 8:45 am]

BILLING CODE 8010–01–M

[8] Since temporary approval for the current CMO margin and pricing methodology was granted, PTC has completed the system enhancements necessary to use and compare data from two pricing vendors. CMO prices are established by defaulting to the lower of the two in the event of any discrepancy.

[9] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[10] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[11] Telephone conversation between John Rudolph, Board of Governors, and Ari Burstein, Division of Market Regulation, Commission (April 15, 1996).

[12] 17 CFR. 200.30–3(a)(12) (1995).

UNITED STATES SENTENCING COMMISSION

Amendments to the Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of submission to Congress of amendments to the sentencing guidelines.

SUMMARY: Pursuant to its authority under section 994(p) of title 28, United States Code, the United States

Sentencing Commission, on May 1, 1996, submitted to the Congress amendments to the sentencing guidelines, policy statements, and official commentary together with reasons for the amendments. Pursuant to 28 U.S.C. 994(p), the Commission has specified an effective date of November 1, 1996, for these amendments.

ADDRESSES: Comments should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, Attn: Public Information.

FOR FURTHER INFORMATION CONTACT: Mike Courlander, Public Information Specialist, telephone: (202) 273–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission, an independent agency in the judicial branch of the U.S. Government, is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs the Commission periodically to review and revise guidelines previously promulgated and authorizes it to submit guideline amendments to the Congress no later than the first day of May each year. See 28 U.S.C. 994(o), (p). Absent action of Congress to the contrary, the amendments become effective on the date specified by the Commission (i.e., November 1, 1996) by operation of law.

Notice of the amendments submitted to the Congress on April 30, 1996, was published in the Federal Register of February 23, 1996 (61 FR 7037) and March 15, 1996 (61 FR 10835). A public hearing on the proposed amendments was held in Washington, DC, on March 11, 1996. After review of the hearing testimony and additional public comment, the Commission promulgated the amendments set forth below, each having been approved by at least four voting Commissioners.

In connection with its ongoing process of guideline review, the Commission welcomes comment on any aspect of the sentencing guidelines, policy statements, and official commentary.

Authority: 28 U.S.C. 994 (a), (o), (p).

Richard P. Conaboy,

Chairman.

Amendments to the Sentencing Guidelines

Pursuant to section 994(p) of title 28, United States Code, the United States Sentencing Commission hereby submits to the Congress the following amendments to the sentencing guidelines and the reasons therefor. As authorized by such section, the Commission specifies an effective date of November 1, 1996, for these amendments.

Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary

1. Amendment: Section 2G2.1(a) is amended by striking ''25'' and inserting ''27''.

Section 2G2.1(b)(1) is amended to read as follows:

''(1) If the offense involved a victim who had (A) not attained the age of twelve years, increase by 4 levels; or (B) attained the age of twelve years but not attained the age of sixteen years, increase by 2 levels.''.

Section 2G2.1(b) is amended by adding at the end the following:

''(3) If a computer was used to solicit participation by or with a minor in sexually explicit conduct for the purpose of producing sexually explicit material, increase by 2 levels.''.

The Commentary to § 2G2.1 captioned ''Statutory Provisions'' is amended by striking ''§ 2251 (a), (b), (c)(1)(B)'' and inserting ''§§ 2251 (a), (b), (c)(1)(B), 2258 (a), (b)''.

Section 2G2.2(a) is amended by striking ''15'' and inserting ''17''.

Section 2G2.2(b) is amended by adding at the end the following:

''(5) If a computer was used for the transmission of the material or a notice or advertisement of the material, increase by 2 levels.''.

The Commentary to § 2G2.2 captioned ''Statutory Provisions'' is amended by inserting ''2258 (a), (b)'' after ''2252(a)(1)–(3)''.

The Commentary to § 2G2.2 captioned ''Application Notes'' is amended by striking Notes 4 and 5; and by amending Notes 1 and 2 to read as follows:

''1. For purposes of this guideline—

'' 'Distribution' includes any act related to distribution for pecuniary gain, including production, transportation, and possession with intent to distribute.

'' 'Pattern of activity involving the sexual abuse or exploitation of a minor' means any combination of two or more separate instances of the sexual abuse or sexual exploitation of a minor by the defendant, whether or not the abuse or exploitation (A) occurred during the course of the offense, (B) involved the same or different victims, or (C) resulted in a conviction for such conduct.

'' 'Sexual abuse or exploitation' means conduct constituting criminal sexual abuse of a minor, sexual exploitation of a minor, abusive sexual contact of a minor, any similar offense under state law, or an attempt or conspiracy to commit any of the above offenses. 'Sexual abuse or exploitation' does not include trafficking in material relating to the sexual abuse or exploitation of a minor.

'' 'Sexually explicit conduct' has the meaning set forth in 18 U.S.C. § 2256.

''2. If the defendant engaged in the sexual abuse or exploitation of a minor at any time (whether or not such abuse or exploitation occurred during the course of the offense or resulted in a conviction for such conduct) and subsection (b)(4) does not apply, an upward departure may be warranted. In addition, and upward departure may be warranted if the defendant received an enhancement under subsection (b)(4) but that enhancement does not adequately reflect the seriousness of the sexual abuse or exploitation involved.

''Prior convictions taken into account under subsection (b)(4) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).''.

Section 2G2.4(a) is amended by striking ''13'' and inserting ''15''.

Section 2G2.4(b) is amended by adding at the end the following:

''(3) If the defendant's possession of the material resulted from the defendant's use of a computer, increase by 2 levels.''.

Reason for Amendment

This amendment implements the congressional directives in section 2 of the Sex Crimes Against Children Prevention Act of 1995, Pub. L. 104–71, 109 Stat. 774, by providing a two-level enhancement for offenses involving the sexual exploitation of minors under sections 2251 and 2252 of title 18, United States Code. The two-level enhancement is provided in the base offense levels under §§ 2G2.1, 2G2.2, and 2G2.4.

This amendment also implements the directive in section 3 of such Act by providing a two-level enhancement for offenses under sections 2251(c)(1)(A) and 2252 of title 18, United States Code, if a computer was used to transmit certain notices or advertisements of material involving minors engaged in sexually explicit conduct or to transport or ship that material. The enhancement in § 2G2.2(b)(5) applies to the transmission of the material or of the notice or advertisement of the material. The enhancement in § 2G2.4(b)(3) applies only if the defendant's possession of the material resulted from the defendant's use of a computer. In addition to these congressionally directed enhancements, the amendment adds a two-level enhancement under § 2G2.1(b)(3) if a computer was used to solicit participation in sexually explicit

conduct by or with a minor for the purpose of producing sexually explicit material, in violation of 18 U.S.C. § 2251(c)(1)(B).

This amendment also addresses several issues in respect to Application Notes 4 and 5 of the Commentary to § 2G2.2. First, the amendment revises the definition of ''pattern of activity involving the sexual abuse or exploitation of a minor'' to clarify that ''sexual abuse or exploitation,'' for purposes of § 2G2.2(b)(4), requires that the defendant personally had participated in such conduct. The amendment defines ''sexual abuse or exploitation'' to mean conduct constituting criminal sexual abuse, sexual exploitation, or abusive sexual contact and to exclude trafficking in child pornography. These revisions are consistent with *United States* v. *Chapman,* 60 F.3d 894 (1st Cir. 1995) and *United States* v. *Ketcham,* No. 95–5002, 1996 WL 141628 (3d Cir. Mar. 29, 1996), both of which held that the defendant's transportation or distribution of child pornography is not sexual exploitation within the meaning of the ''pattern of activity'' enhancement in § 2G2.2(b)(4). Second, the amendment clarifies that the ''pattern of activity'' may include acts of sexual abuse or exploitation that were not committed during the course of the offense or that did not result in a conviction. This revision responds in part to the holding in Chapman, 60 F.3d at 901, that the ''pattern of activity'' enhancement is inapplicable to past sexual abuse or exploitation unrelated to the offense of conviction. The amended language provides that conduct involving the defendant's sexual abuse or exploitation of a minor may be considered even if that conduct did not occur as part of the offense of conviction. Accordingly, the conduct considered for purposes of the ''pattern of activity'' enhancement is broader than the scope of relevant conduct typically considered under § 1B1.3 (Relevant Conduct). Third, the amendment revises the departure provision of Application Note 5 to specify that an upward departure may be warranted if the defendant (1) did not engage in a ''pattern of activity'' but nevertheless abused a minor at any time, or (2) engaged in a ''pattern of activity'' but the enhancement does not adequately reflect the seriousness of the sexual abuse or exploitation. Fourth, the amendment clarifies that prior convictions counted as part of the ''pattern of activity'' also may be counted as part of the defendant's criminal history under Chapter Four, if those convictions meet the criteria set forth in the relevant guidelines of that chapter.

The amendment also makes the ''Statutory Provisions'' of the Commentary to §§ 2G2.1 and 2G2.2 more comprehensive by adding 18 U.S.C. § 2258 (a) and (b) to the list of provisions covered by those guidelines.

2. Amendment: Chapter 2, Part G, Subpart 1 is amended by striking §§ 2G1.1 and 2G1.2 and inserting the following:

''§ 2G1.1. Promoting Prostitution or Prohibited Sexual Conduct

''(a) Base Offense Level: 14

''(b) Specific Offense Characteristics

''(1) If the offense involved the use of physical force, or coercion by threats or drugs or in any manner, increase by 4 levels.

''(2) If the offense involved a victim who had (A) not attained the age of twelve years, increase by 9 levels; (B) attained the age of twelve years but not attained the age of sixteen years, increase by 7 levels; or (C) attained the age of sixteen years but not attained the age of eighteen years, increase by 5 levels.

''(3) If subsection (b)(2) applies, and (A) the defendant was a parent, relative, or legal guardian of the victim, or (B) the victim was otherwise in the custody, care, or supervisory control of the defendant, increase by 2 levels.

''(c) Cross References

''(1) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a person less than eighteen years of age to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production).

''(2) If the offense involved criminal sexual abuse, attempted criminal sexual abuse, or assault with intent to commit criminal sexual abuse, apply § 2A3.1 (Criminal Sexual Abuse; Attempt or Assault with the Intent to Commit Criminal Sexual Abuse).

''(3) If the offense did not involve promoting prostitution, and neither subsection (c)(1) nor (c)(2) is applicable, use the offense guideline applicable to the underlying prohibited sexual conduct. If no offense guideline is applicable to the prohibited sexual conduct, apply § 2X5.1 (Other Offenses).

''(d) Special Instruction

''(1) If the offense involved more than one victim, Chapter Three, Part D (Multiple Counts) shall be applied as if the promoting of prostitution or prohibited sexual conduct in respect to each victim had been contained in a separate count of conviction.

''Commentary

''Statutory Provisions: 8 U.S.C. § 1328; 18 U.S.C. §§ 2421, 2422, 2423(a).

''Application Notes:

''1. For purposes of this guideline—

'' 'Coercion' includes any form of conduct that negates the voluntariness of the behavior of the victim. Coercion would apply, for example, where the ability of the victim to appraise or control conduct was substantially impaired by drugs or alcohol. In the case of an adult victim, rather than a victim less than eighteen years of age, this characteristic generally will not apply if the drug or alcohol was voluntarily taken.

'' 'Promoting prostitution or prohibited sexaul conduct' means (A) transporting a person for the purpose of prostitution or prohibited sexual conduct, or (B) persuading, inducing, enticing, or coercing a person to engage in, or travel for the propose of engaging in, prostitution or prohibited sexual conduct.

'' 'Sexually explicit conduct' has the meaning set forth in 18 U.S.C. § 2256.

'' 'Victim' means a person transported, persuaded, induced, enticed, or coerced to engage in, or travel for the purpose of engaging in, prostitution or prohibited sexual conduct, whether or not the person consented to the prostitution or prohibited sexual conduct.

''(2). The enactment for physical force, or coercion, anticipates no bodily injury. If bodily injury results, an upward departure may be warranted. See Chapter Five, part K (Departures).

''3. For the purposes of § 3B1.1 (Aggravating Role), a victim, as defined in this guideline, is considered a participant only if that victim assisted in the promoting of prostitution or prohibited sexual conduct in respect to another victim.

''4. For the purposes of Chapter Three, Part D (Multiple Counts), each person transported, persuaded, induced, enticed, or coerced to engage in, or travel to engage in, prostitution or prohibited sexual conduct is to be treated as a separate victim. Consequently, multiple counts involving more than one victim are not to be grouped together under § 3D1.2 (Groups of Closely-Related Counts). In addition, subsection (d)(1) directs that if the relevant conduct of an offense of conviction includes the promoting of prostitution or prohibited sexual conduct in respect to more than one

victim, whether specifically cited in the count of conviction or not, each such victim shall be treated as if contained in a separate count of conviction.

''5. Subsection (b)(3) is intended to have broad application and includes offenses involving a victim less than eighteen years of age entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this adjustment, the court should look to the actual relationship that existed between the defendant and the victim and not simply to the legal status of the defendant-victim relationship.

''6. If the adjustment in subsection (b)(3) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

''7. The cross reference in subsection (c)(1) is to be construed broadly to include all instances where the offense involved employing, using, persuading, inducing, enticing, coercing, transporting, permitting, or offering or seeking by notice of advertisement, a person less than eighteen years of age to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

''8. The cross reference at subsection (c)(3) addresses the unusual case in which the offense did not involve promoting prostitution and neither subsection (c)(1) nor (c)(2) is applicable. In such case, the guideline for the underlying prohibited sexual conduct is to be used; e.g., § 2A3.2 (Criminal Sexual Abuse of Minor (Statutory Rape) or Attempt to Commit Such Acts) or § 2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact). If three is no offense guideline for the underlying prohibited sexual conduct, § 2X5.1 (Other Offenses) is to be used.''.

Chapter 1, Part A, Subpart 4(b) is amended in the fourth paragraph by striking the third sentence.

Section 3D1.2(d) is amended in the third paragraph by striking ''2G1.2,''.

Appendix A is amended—

in the line referenced to 8 U.S.C. § 1328, by striking '', 2G1.2'';

in the line referenced to 18 U.S.C. § 2421, by striking '', 2G1.2'';

in the line referenced to 18 U.S.C. § 2422, by striking '', 2G1.2''; and

in the line referenced to 18 U.S.C. § 2423(a), by striking '', 2G1.2'' and inserting ''2G1.1''.

Reason for Amendment

This is a three-part amendment. First, this amendment implements the congressional directive in section 4 of the Sex Crimes Against Children Prevention Act of 1995, Pub. L. No. 104–71, 109 Stat. 774, by providing a three-level enhancement for offenses involving the transportation of minors with intent to engage in prostitution or other prohibited sexual conduct under 18 U.S.C. § 2423(a). The three-level enhancement is provided in the specific offense characteristic in subsection (b)(2) related to the age of the victim.

Second, this amendment addresses 18 U.S.C. § 2422(b), a new offense created by section 508 of the Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56. That offense makes it unlawful, in interstate or foreign commerce, including through the mail, or within the special maritime or territorial jurisdiction of the United States, to knowingly persuade, induce, entice, or coerce an individual under the age of 18 years to engage in prostitution or other prohibited sexual conduct. The amendment brings this new offense within the scope of the consolidated, expanded guideline. As revised, the guideline is broadly applicable to offenses that involve ''promoting prostitution or prohibited sexual conduct.'' That term is defined to encompass conduct covered by the new Telecommunications Act offense as well as conduct previously covered by the guideline; *i.e.*, transporting a person, or inducing a person to travel, for the purpose of prostitution or other prohibited sexual conduct.

Third, this amendment consolidates §§ 2G1.1 (Transportation for the Purpose of prostitution or Prohibited Sexual Conduct) and 2G1.2 (Transportation of a Minor for the Purpose of Prostitution or Prohibited Sexual Conduct) in furtherance of the Commission's goal to simplify the operation of the guidelines. Because the consolidated guideline covers both offenses involving adult victims and those involving minors, a two-level increase is provided in the specific offense characteristic related to the age of the victim to increase the offense level when a minor is involved. The two-level increase is in addition to the three-level enhancement directed to be made by the Sex Crimes Against Children Prevention Act of 1995. In addition, the consolidated guideline defines the term ''victim'' and incorporates the cross references of § 2G1.2 into the consolidate guideline. The amendment also clarifies that the ''Statutory Provisions'' in the Commentary of the consolidated guideline cover offenses under 18 U.S.C. § 2423(a (but not § 2423b), which is referenced in Appendix A to §§ 2A3.1, 2A3.2, and 2A3.3).

[FR Doc. 96–11174 Filed 5–3–96; 8:45 am]

BILLING CODE 2210–40–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted by July 5, 1996.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, SW., Suite 5000, Washington, D.C. 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: ''Evaluation of the Small Business Administration's 7(a) and 504 Loan Programs''

Type of Request: New Information Collection

Description of Respondents: Owners of businesses that received a 7(a) or 504 loan during fiscal year 1990

Annual Responses: 1,000

Annual Burden: 1,450

Comments: Send all comments regarding this information collection to Allan Mandel, Chief, Policy Branch, Office of Borrower and Lender Servicing, Small Business Administration, 409 3rd Street, SW., Suite 8300 Washington, D.C. 20416. Phone Number: 202–205–6488. Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality. Copies of this collection can also be obtained from Allan Mandel.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 96–11241 Filed 5–3–96; 8:45 am]

BILLING CODE 8025–01–M

COMMISSION ON UNITED STATES–PACIFIC TRADE AND INVESTMENT POLICY

Office of the U.S. Trade Representative

Meeting of the Commission on United States Pacific Trade and Investment Policy and Subsequent Meeting Dates

AGENCY: Commission on United States-Pacific Trade and Investment Policy/Office of the United States Trade Representative.

ACTION: Notice that the May 14, 1996, meeting of the Commission on United States Pacific Trade and Investment Policy will be held from 9 a.m. to 6 p.m. The meeting will be closed to the public from 11 a.m. to 3 p.m. The meeting will be open to the public from 9 a.m. to 11 a.m. and from 3 p.m. to 5 p.m. Subsequent meetings tentatively will be held on June 12, June 26, July 18 and August 8, 1996.

SUMMARY: The Commission on United States Pacific Trade and Investment Policy will hold a meeting on May 14, 1996, from 9 a.m. to 6 p.m. The meeting will be closed to the public from 11 a.m. to 3 p.m. The meeting will include a review and discussion of current issues affecting U.S. trade policy with Asia. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, the USTR has determined that this portion of the meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. The meeting will be open to the public and press from 9 to 11 a.m. and from 3 to 5 p.m. At these times the Commission will continue the study phase of its work and consider: (1) Asian perspectives on U.S. trade and investment policies and on the region; (2) APEC; (3) various assessments of the effectiveness and nature of U.S. trade and investment policies; (4) measures of success in economic and trade policy; and (4) the application of game theory to international economics. Attendance during this part of the meeting is for observation only. Individuals who are not members of the Commission will not be invited to comment.

DATES: The meeting is scheduled for May 14, 1996, unless otherwise notified. Subsequent meetings will be reconfirmed.

ADDRESSES: The meeting will be held at the Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, Room 6806, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Nancy Adams, Executive Director of Commission on United States Pacific Trade and Investment Policy, Room 400, 600 17th Street, NW., Washington, DC. 20508, (202) 395–9679.

Nancy Adams,

Executive Director, Commission on United States-Pacific Trade and Investment Policy.

Charlene Barshefsky,

Acting United States Trade Representative.

[FR Doc. 96–11227 Filed 5–3–96; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Albany County Airport, Albany, New York

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Albany County Airport Authority for the Albany County Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Albany County Airport under part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before October 28, 1996.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is April 30, 1996. The public comment period ends July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Steven Urlass, Community Planner, FAA—Eastern Regional Office, Fitzgerald Federal Building, JFK International Airport, Jamaica, New York 11430; (718) 553–3353.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Albany County Airport are in compliance with applicable requirements of part 150, effective April 30, 1996.

Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before October 28, 1996. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of FAR part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Albany County Airport Authority submitted to the FAA on May 2, 1995, noise exposure maps, descriptions and other documentation which were produced during an airport noise compatibility planning study. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Albany County Airport Authority. The specific maps under consideration are the noise exposure maps: Exhibit 1, Existing (1995) Noise Exposure Map (first page following page vi) and Exhibit 2, Future (2000) Noise Exposure Map (second page following page vi) of the May 1995 submission. The FAA has determined that these maps for Albany County Airport are in compliance with

applicable requirements. This determination is effective on April 30, 1996. FAA's determination on an airport operator's noise exposure maps is limited to finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to the noise exposure maps submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator under § 150.21 of Part 150, that the statutorily required consultation has been accomplished.

The FAA formally received on March 15, 1996, the noise compatibility program for Albany County Airport, also effective April 30, 1996. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to the approval or disapproval of the program. The formal review period, limited to law to a maximum of 180 days, will be completed on or before October 28, 1996.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to the factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practical. The public comment period ends July 1, 1996.

Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program, are available for examination at the following locations:

FAA

Eastern Regional Office, Fitzgerald Federal Building, Airports Division, Room 337, JFK International Airport, Jamaica, New York 11430

FAA

New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530

Albany County Airport, Airport Director's Office, Albany County Airport Authority, ARFF Building, 2nd Floor, Albany, New York 12211

Questions may be directed to the individual name above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Jamaica, New York on April 30, 1996

Anthony P. Spera,

Acting Manager, Airports Division, Eastern Region.

[FR Doc. 96–11253 Filed 5–3–96; 8:45 am]

BILLING CODE 4910–13–M

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on May 15, 1996, at 10 a.m. Arrange for oral presentations by May 10, 1996.

ADDRESSES: The meeting will be held at the Regional Airline Association (RAA), 1101 Connecticut Avenue, Suite 700, Washington DC.

FOR FURTHER INFORMATION CONTACT: Mr. Manuel Vega, Federal Aviation Administration (ARM–20) 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–5575; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Executive Committee to be held on May 15, 1996, at the Regional Airline Association (RAA), 1101 Connecticut Avenue, Suite 700, Washington, DC, 10 a.m. The agenda will include:

- Digital Information Working Group briefing
- Review of open action items since the last meeting
- Report on status of all outstanding recommendations
- Notable comments on specific issues
- Other business

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by May 10, 1996, to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on April 30, 1996.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 96–11251 Filed 5–3–96; 8:45 am]

BILLING CODE 4910–03–M

National Highway Traffic Safety Administration

Automotive Fuel Economy Program Report to Congress

The attached document, *Automotive Fuel Economy Program, Twentieth Annual Report to the Congress,* was prepared pursuant to 49 U.S.C 32916 which requires in pertinent part that ''the Secretary shall submit to each House of Congress, and publish in the Federal Register, a review of average fuel economy standards under this part.''

Issued on: April 29, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

Automotive Fuel Economy Program Twentieth Annual Report to Congress

Calendar Year 1995

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Section I: Introduction

The Twentieth Annual Report to Congress on the Automotive Fuel Economy Program summarizes the activities of the National Highway Traffic Safety Administration (NHTSA) during 1995, in accordance with 49 U.S.C. 32916 *et seq.*, which requires the submission of a report each year. Included in this report are sections summarizing rulemaking activities during 1995 and a discussion of the use of advanced automotive technology by the industry as required by Section 305, Title III, of the Department of Energy Act of 1978 (P.L. 95–238).

The Secretary of Transportation is required to administer a program for regulating the fuel economy of new passenger cars and light trucks in the United States market. The authority to administer the program was delegated by the Secretary to the Administrator of NHTSA, 49 C.F.R. 1.50(f).

NHTSA's responsibilities in the fuel economy area include:

(1) Establishing and amending average fuel economy standards for manufacturers of passenger cars and light trucks, as necessary;

(2) Promulgating regulations concerning procedures, definitions, and reports necessary to support the fuel economy standards;

(3) Considering petitions for exemption from established fuel economy standards by low volume manufacturers (those producing fewer than 10,000 passenger cars annually worldwide) and establishing alternative standards for them;

(4) Preparing reports to Congress annually on the fuel economy program;

(5) Enforcing fuel economy standards and regulations; and

(6) Responding to petitions concerning domestic production by foreign manufacturers, and other matters.

Passenger car fuel economy standards were established by Congress for Model Year (MY) 1985 and thereafter at a level of 27.5 miles per gallon (mpg). NHTSA is authorized to amend the standard above or below that level. Standards for light trucks were established by NHTSA for MYs 1979 through 1997. NHTSA set a combined standard of 20.7 mpg for light truck fuel economy standard for MYs 1996 and 1997. All current standards are listed in Table I–1.

TABLE I–1.—FUEL ECONOMY STANDARDS FOR PASSENGER CARS AND LIGHT TRUCKS MODEL YEARS 1978 THROUGH 1997 [IN MPG]

Model year	Passenger cars	Light Trucks [1]		
		Two-wheel drive	Four-wheel drive	Combined [1 2 3]
1978	[4] 18.0	.....	.....	.....
1979	[4] 19.0	17.2	15.8	.....
1980	[4] 20.0	16.0	14.0	([5])
1981	22.0	[6] 16.7	15.0	([5])
1982	24.0	18.0	16.0	17.5
1983	26.0	19.5	17.5	19.0
1984	27.0	20.3	18.5	20.0
1985	[4] 27.5	[7] 19.7	[7] 18.9	[7] 19.5
1986	[8] 26.0	20.5	19.5	20.0
1987	[9] 26.0	21.0	19.5	20.5
1988	[9] 26.0	21.0	19.5	20.5
1989	[10] 26.5	21.5	19.0	20.5
1990	[4] 27.5	20.5	19.0	20.0
1991	[4] 27.5	20.7	19.1	20.2
1992	[4] 27.5	.....	.....	20.2
1993	[4] 27.5	.....	.....	20.4
1994	[4] 27.5	.....	.....	20.5
1995	[4] 27.5	.....	.....	20.6
1996	[4] 27.5	.....	.....	20.7
1997	[4] 27.5	.....	.....	20.7

[1] Standards for MY 1979 light trucks were established for vehicles with a gross vehicle weight rating (GVWR) of 6,000 pounds or less. Standards for MY 1980 and beyond are for light trucks with a GVWR of 8,500 pounds or less.
[2] For MY 1979, light truck manufacturers could comply separately with standards for four-wheel drive, general utility vehicles and all other light trucks, or combine their trucks into a single fleet and comply with the 17.2 mpg standard.
[3] For MYs 1982–1991, manufacturers could comply with the two-wheel and four-wheel drive standards or could combine all light trucks and comply with the combined standard.
[4] Established by Congress in Title V of the Act.
[5] A manufacturer whose light truck fleet was powered exclusively by basic engines which were not also used in passenger cars could meet standards of 14 mpg and 14.5 mpg in MYs 1980 and 1981, respectively.
[6] Revised in June 1979 from 18.0 mpg.
[7] Revised in October 1984 from 21.6 mpg for two-wheel drive, 19.0 mpg for four-wheel drive, and 21.0 mpg for combined.
[8] Revised in October 1985 from 27.5 mpg.
[9] Revised in October 1986 from 27.5 mpg.
[10] Revised in September 1988 from 27.5 mpg.

Section II: Fuel Economy Improvement by Manufacturers

The fuel economy achievements for domestic and foreign-based manufacturers in MY 1994 were updated to include final Environmental Protection Agency (EPA) calculations, where available, since the publication of the *Nineteenth Annual Report to the Congress*. These fuel economy achievements and current projected data for MY 1995 are listed in Tables II–1 and II–2.

Overall fleet fuel economy for passenger cars was 28.5 mpg in MY 1995, an increase of 0.3 mpg from the MY 1994 level. For MY 1995, Corporate Average Fuel Economy (CAFE) values increased above MY 1994 levels for 16 of 22 passenger car manufacturers' fleets. (See Table II–1.) These 16 companies accounted for over 57 percent of the total MY 1995 production. Manufacturers continued to introduce new technologies and more fuel-efficient models, as well as some larger, less fuel-efficient models. For MY 1995, the overall domestic manufacturers' fleet average fuel economy was 27.7 mpg. For MY 1995, Chrysler, Ford, and Mazda domestic passenger car CAFE values rose 2.4 mpg, 0.1 mpg, and 1.0 mpg, respectively, from their 1994 levels, while General Motors remained at its MY 1994 level. Overall, the domestic manufacturers' combined CAFE increased 0.4 mpg above MY 1994 levels.

TABLE II–1.—PASSENGER CAR FUEL ECONOMY PERFORMANCE BY MANUFACTURER* MODEL YEARS 1994 AND 1995

Manufacturer	Model year cafe (MPG)	
	1994	1995
Domestic:		
Chrysler	26.2	28.6
Ford	27.6	27.7
General Motors	27.4	27.4
Mazda	29.1	30.1
Sales Weighted Average (Domestic)	27.3	27.7
Import:		
BMW	25.1	25.3
Chrysler Imports	31.3	30.4
Fiat	19.8	16.0
Ford Imports	25.7	33.9
GM Imports	24.6	26.2
Honda	32.5	31.7
Hyundai	32.5	30.7
Kia	30.8	31.3
Mazda	31.2	31.4
Mercedes-Benz	23.7	24.6
Mitsubishi	28.9	29.5
Nissan	29.7	30.0
Porsche	22.0	22.7
Subaru	28.3	28.6
Suzuki	43.8	40.6
Toyota	29.0	30.3
Volvo	25.7	26.0
Volkswagen	28.1	28.5
Sales Weighted Average (Import)	29.6	29.9
Total Fleet Average	28.2	28.5
Fuel Economy Standards	27.5	27.5

*Manufacturers or importers of fewer than 1,000 passenger cars annually are not listed.

Note.—Mercedes-Benz's MY 1994 CAFE value differs from that used in the *Nineteenth Annual Report to the Congress* due to the use of the final EPA calculation.

TABLE II–2.—LIGHT TRUCK FUEL ECONOMY PERFORMANCE BY MANUFACTURER MODEL YEARS 1994 AND 1995

Manufacturer	Model year cafe (MPG) Combined	
	1994	1995
Domestic:		
Chrysler	20.5	20.1
Ford	20.8	20.6
General Motors	19.9	19.8
UMC	18.5	([1])
Sales Weighted Average (Domestic)	20.4	20.1
Import:		
Isuzu	20.8	20.6
Land Rover	16.4	16.3
Mazda	21.2	20.9
Mitsubishi	22.0	21.0
Nissan	22.5	22.5

TABLE II–2.—LIGHT TRUCK FUEL ECONOMY PERFORMANCE BY MANUFACTURER MODEL YEARS 1994 AND 1995—Continued

Manufacturer	Model year cafe (MPG) Combined	
	1994	1995
Subaru	29.6	(1)
Suzuki	28.5	28.2
Toyota	22.0	21.2
Volkswagen	21.0	19.6
Sales Weighted Average (Import)	22.0	21.6
Total Fleet Average	20.6	20.4
Fuel Economy Standards	20.5	20.6

[1] Subaru and UMC did not produce light trucks for MY 1995.

In MY 1995, the fleet average fuel economy for import passenger cars increased by 0.3 mpg from the MY 1994 CAFE level to 29.9 mpg. Thirteen of the 18 import car manufacturers increased their CAFE values between MYs 1994 and 1995, including six of the nine Asian manufacturers. Figure II–1 illustrates the changes in total new passenger car fleet CAFE from MY 1978 to MY 1995.

The total light truck fleet CAFE decreased 0.2 mpg below the MY 1994 CAFE level of 20.6 mpg. Figure II–2 illustrates the trends in total light truck fleet CAFE from MY 1979 to MY 1995.

A number of passenger car and a few light truck manufacturers are projected to fail to achieve the levels of the MY 1995 CAFE standards. However, NHTSA is not yet able to determine which of these manufacturers may be liable for civil penalties for non-compliance. Some MY 1995 CAFE values may change when final figures are provided to NHTSA by EPA, in mid-1996. In addition, several manufacturers are not expected to pay civil penalties because the credits they earned by exceeding the fuel economy standards in earlier years offset later shortfalls. Other manufacturers may file carryback plans to demonstrate that they anticipate earning credits in future model years to offset current deficits.

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Figure II-1

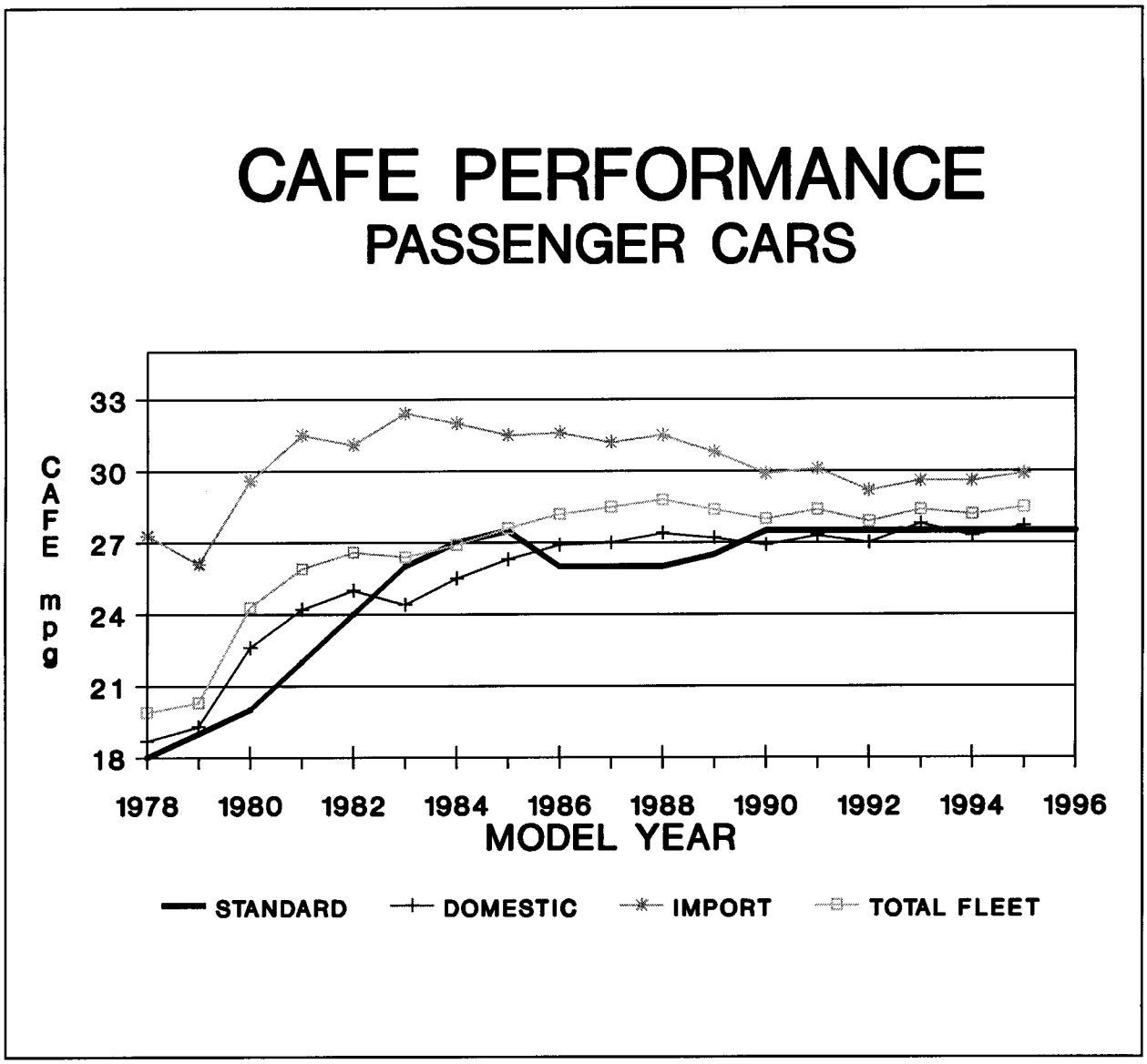
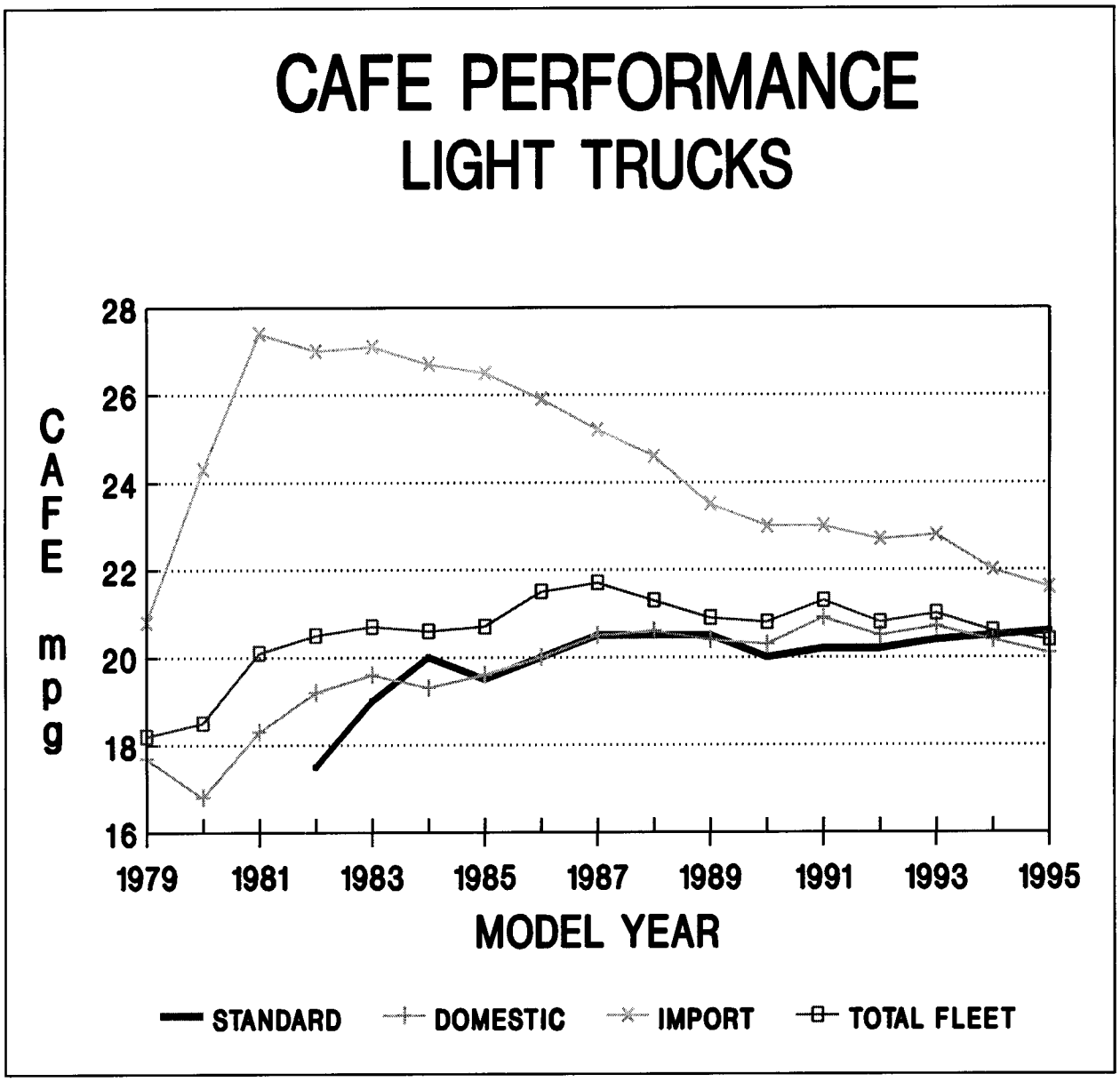

CAFE PERFORMANCE
PASSENGER CARS
CAFE mpg
33
30
27
24
21
18
1978
1980
1982
1984
1986
1988
1990
1992
1994
1996
MODEL YEAR
STANDARD
DOMESTIC
IMPORT
TOTAL FLEET

Figure II-2



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Fleet average fuel economy for all MY 1995 passenger cars combined exceeded the level of the MY 1995 standard by 1.0 mpg.

Subaru terminated sales of its light trucks in the United States after MY 1994; however, the manufacturer continues to sell its passenger cars. Subaru accumulated substantial CAFE credits during its 11-year marketing span of its light trucks in the United States.

The characteristics of the MY 1995 passenger car fleet reflect a continuing trend toward satisfying consumer demand for higher performance cars. (See Table II–3.) From MY 1994 to MY 1995, horsepower/100 pounds, a measure of vehicle performance, increased from 4.84 to 4.91 for domestic passenger cars. However, it decreased slightly from 4.71 to 4.52 for import passenger cars. The total fleet average for passenger cars decreased slightly from 4.79 horsepower/100 pounds in MY 1994 to 4.77 in MY 1995. Compared to MY 1994, the average curb weight for MY 1995 increased by 28 pounds for the domestic fleet and 61 pounds for the import fleet. The total new passenger car fleet is 45 pounds heavier than it was in MY 1994, primarily because of the larger share held by the domestic fleet. Average engine displacement decreased from 188 to 186 cubic inches for domestic passenger cars, and from 137 to 135 cubic inches for import passenger cars, from MY 1994 to MY 1995.

TABLE II–3.—PASSENGER CAR FLEET CHARACTERISTICS FOR MYS 1994 AND 1995

Characteristics	Total fleet		Domestic fleet		Import fleet	
	1994	1995	1994	1995	1994	1995
Fleet Average Fuel Economy, mpg	28.2	28.5	27.3	27.7	29.6	29.9
Fleet Average Curb Weight, lbs.	3011	3056	3098	3126	2870	2931
Fleet Average Engine Displacement, cu. in.	169	168	188	186	137	135
Fleet Average Horsepower/Weight ratio, HP/100 lbs	4.79	4.77	4.84	4.91	4.71	4.52
% of Fleet	100	100	61.7	64.1	38.3	35.9
Segmentation by EPA Size Class, %						
Two-Seater	1.1	0.8	0.5	0.4	2.1	1.5
Minicompact	0.4	0.8	0.00	0.00	1.1	2.1
Subcompact*	23.3	16.0	17.9	10.3	31.9	26.2
Compact*	34.4	40.3	29.5	37.4	42.2	45.4
Mid-Size*	25.1	27.9	30.0	31.3	17.1	21.8
Large*	15.7	14.3	22.1	20.7	5.5	3.0
Diesel Engines	0.01	0.05	0.00	0.00	0.02	0.14
Turbo or Supercharged Engines	0.9	0.6	0.4	0.00	1.7	1.8
Fuel Injection	100	100	100	100	100	100
Front-Wheel Drive	84.7	84.4	85.0	83.9	84.3	85.1
Automatic Transmissions	82.8	83.3	89.0	88.9	72.7	73.2
Automatic Transmissions with Lockup Clutches	95.2	97.6	95.2	99.3	95.1	94.0
Automatic Transmissions with Four or more Forward Speeds	83.6	87.4	78.6	84.5	93.4	93.7

* Includes associated station wagons.

The 0.4 mpg fuel economy improvement for the MY 1995 domestic passenger car fleet may be attributed in part to mix shifts and in part to technology changes in several areas: a pronounced increase in the use of more automatic transmissions with lockup torque converters and more automatic transmissions with four speeds.

The size/class breakdown shows an increased trend towards minicompact, compact, and mid-size passenger cars and a decrease in two-seater, subcompact, and large passenger cars for the overall fleet. The size/class mix in both the domestic and import fleet shifted from subcompact and large passenger cars to compact and mid-size passenger cars. The import share of the passenger car market declined slightly in MY 1995.

The domestic fleet had a decrease in share of turbocharged and supercharged engines. Diesel engines rose slightly in share in MY 1995, but were offered only by one import manufacturer.

Passenger car fleet average characteristics have changed significantly since MY 1978 (the first year of fuel economy standards). (See Table II–4.) After substantial initial weight loss (from MY 1978 to MY 1982, the average passenger car fleet curb weight decreased from 3,349 to 2,808 pounds), then stabilized between 2,800 and 3,000 pounds. Table II–4 shows that the MY 1995 passenger car fleet has nearly equal interior volume and higher performance, but with over 40 percent better fuel economy, than the MY 1978 fleet. (See Figure II–3.)

The characteristics of the MY 1995 light truck fleet are shown in Table II–5. Since light truck manufacturers are not required to divide their fleets into domestic and import fleets based on the 75-percent domestic content threshold used for passenger car fleets, the domestic and import fleet characteristics in Table II–5 are estimated, based mainly on manufacturer name. The agency assumed that all products of foreign-based manufacturers would not meet the domestic content threshold, whether they were assembled in the United States or Canada, or in another country. The exception to this is the assumption that the import-badged products of a domestic manufacturer's assembly plant were ''domestic'' (Mazda B-Series pickup and Nissan Quest).

TABLE II–4.—NEW PASSENGER CAR FLEET AVERAGE CHARACTERISTICS

[Model Years 1978–1995]

Model year	Fuel economy (mpg)	Curb weight (lb.)	Interior space (cu. ft.)	Engine size (cu. in.)	Horsepower/weight (hp/100 lb.)
1978	19.9	3349	112	260	3.68
1979	20.3	3180	110	238	3.72
1980	24.3	2867	105	187	3.51
1981	25.9	2883	108	182	3.43
1982	26.6	2808	107	173	3.47
1983	26.4	2908	109	182	3.57
1984	26.9	2878	108	178	3.66
1985	27.6	2867	108	177	3.84
1986	28.2	2821	106	169	3.89
1987	28.5	2805	109	162	3.98
1988	28.8	2831	107	161	4.11
1989	28.4	2879	109	163	4.24
1990	28.0	2908	108	163	4.53
1991	28.4	2934	108	164	4.42
1992	27.9	3007	108	169	4.56
1993	28.4	2971	109	164	4.62
1994	28.2	3011	109	169	4.79
1995	28.5	3056	110	168	4.77

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Figure II-3

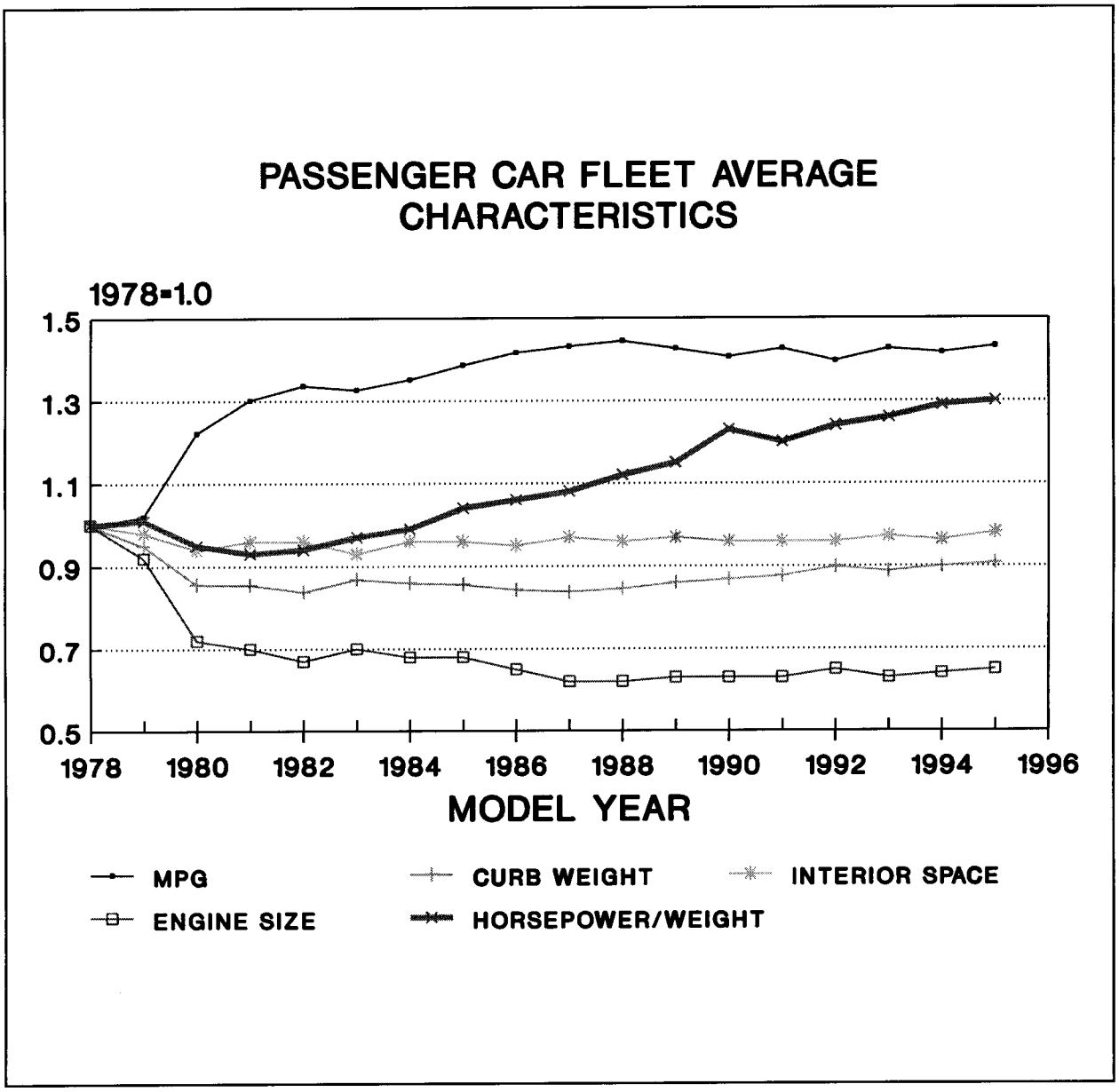

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TABLE II–5—LIGHT TRUCK FLEET CHARACTERISTICS FOR MYS 1994 AND 1995

Characteristics	Total fleet		Domestic fleet		Import fleet	
	1994	1995	1994	1995	1994	1995
Fleet Average Fuel Economy, mpg	20.6	20.4	20.4	20.1	22.0	21.6
Fleet Average Equivalent Test Weight, lbs	4274	4338	4340	4409	3832	3938
Fleet Average Engine Displacement, cu. in	243	244	255	257	165	171
Fleet Average Horsepower/ Weight ratio, HP/100 lbs	3.86	3.87	3.89	3.93	3.65	3.54
% Fleet	100	100	87.0	84.8	13.0	15.2
Segmentation by Type, %:						
Passenger Van Compact	18.0	19.6	19.7	22.3	6.3	4.7
Large	0.5	0.5	0.6	0.6	.....	.....
Cargo Van Compact	1.5	1.7	1.7	2.0	.....	.....
Large	4.7	4.9	5.4	5.8	.....	.....
Small Pickup*	6.6	7.7	5.3	5.7	14.8	20.2
Large Pickup*	40.0	32.0	40.5	33.3	36.8	24.5
Special Purpose	28.7	33.6	26.7	30.6	42.2	50.6
Diesel Engines	0.30	0.18	0.30	0.22	.....	.....
Fuel Injection	99.7	99.6	100	100	97.7	97.5
Automatic Transmissions	77.3	78.8	82.4	83.5	42.7	52.3
Automatic Transmissions with Lockup Clutches	98.3	99.0	98.6	99.3	94.0	95.4
Automatic Transmissions with Four Forward Speeds	92.1	93.3	91.6	92.6	98.9	99.3
4–Wheel Drive	36.1	38.0	34.1	35.5	50.6	52.2

*Including Cab Chassis.

The MY 1995 average test weight of the total light truck fleet increased by 64 pounds over that for MY 1994. Increased popularity of special purpose vehicles, heavier trucks, and trucks with 4-wheel drive (4WD) lowered the fleet fuel economy in MY 1995 but was offset slightly by an increase in the use of automatic transmissions with four forward speeds resulting in an overall decline of 0.2 mpg to 20.4 mpg. Diesel engine usage decreased in light trucks to 0.18 percent in MY 1995 from 0.30 percent in MY 1994. The share of the MY 1995 import light truck fleet increased to 15.2 percent.

CAFE levels for light trucks in the 0–8,500 pounds gross vehicle weight (GVW) class increased from 18.5 mpg in MY 1980 to 21.7 mpg in MY 1987, before declining to 20.4 mpg in MY 1995, influenced by an increase in average weight, engine size, and performance. Light truck production increased from 1.9 million in MY 1980 to 5.7 million in MY 1995. Light trucks comprised 38 percent of the total light duty vehicle fleet production in MY 1995, more than triple the share in MY 1980.

Figure II–4 illustrates an increase in the light duty fleet (combined passenger cars and light trucks) average fuel economy through MY 1987, followed by a gradual decline. (See Table II–6.) Passenger car average fuel economy remained relatively constant for MYs 1987–1995. The overall decline in fuel economy illustrates the growing influence of light trucks and their significant impact on the light duty fleet.

While passenger car fleet fuel economy increased from MY 1994 to MY 1995 by 0.3 mpg and light truck fleet fuel economy decreased by 0.2 mpg, the total fleet fuel economy for MY 1995 increased 0.1 mpg over the MY 1994 level (24.6 mpg for MY 1994 and 24.7 mpg for MY 1995). The shift to light trucks for general transportation is an important trend in consumers' preference and has a significant fleet fuel consumption effect.

Domestic and import passenger car fleet average fuel economies have improved since MY 1978, although the increase is far more dramatic for the domestic fleet. In MY 1995, both domestic and import passenger car fleet average fuel economies increased from the prior year to 27.7 mpg and 29.9 mpg, respectively. Compared to MY 1978, this reflects an increase of 9.0 mpg for domestic cars and 2.6 mpg for import cars.

TABLE II–6.—DOMESTIC AND IMPORT PASSENGER CAR AND LIGHT TRUCK FUEL ECONOMY AVERAGES FOR MODEL YEARS 1978–1995

(IN MPG)

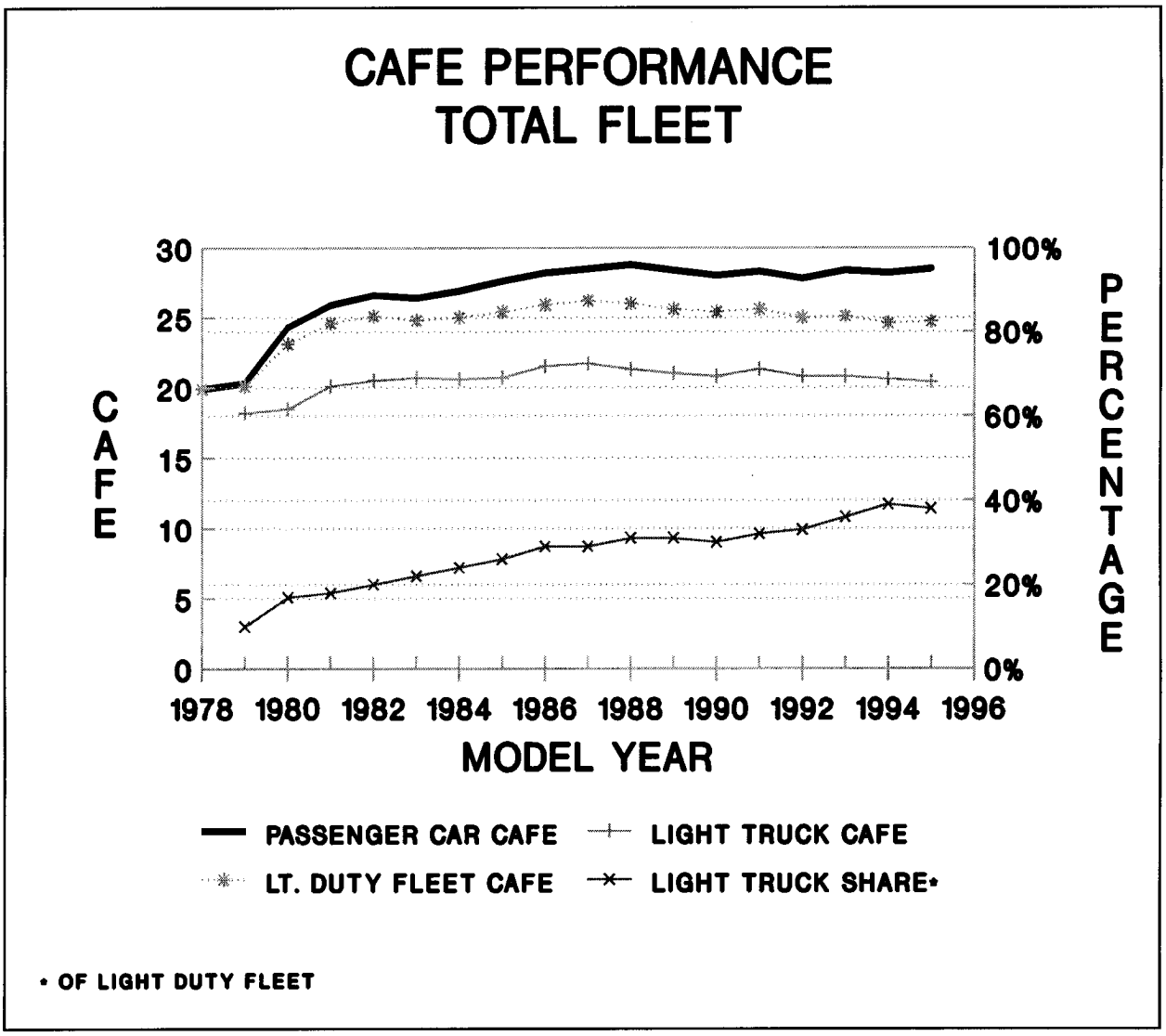
Model year	Domestic			Import			All cars	All light trucks	Total fleet
	Car	Light truck	Com-bined	Car	Light truck	Com-bined			
1978	18.7	.....	.....	27.3	.....	.....	19.9	.....	.....
1979	19.3	17.7	19.1	26.1	20.8	25.5	20.3	18.2	20.1
1980	22.6	16.8	21.4	29.6	24.3	28.6	24.3	18.5	23.1
1981	24.2	18.3	22.9	31.5	27.4	30.7	25.9	20.1	24.6
1982	25.0	19.2	23.5	31.1	27.0	30.4	26.6	20.5	25.1
1983	24.4	19.6	23.0	32.4	27.1	31.5	26.4	20.7	24.8
1984	25.5	19.3	23.6	32.0	26.7	30.6	26.9	20.6	25.0
1985	26.3	19.6	24.0	31.5	26.5	30.3	27.6	20.7	25.4
1986	26.9	20.0	24.4	31.6	25.9	29.8	28.2	21.5	25.9

TABLE II–6.—DOMESTIC AND IMPORT PASSENGER CAR AND LIGHT TRUCK FUEL ECONOMY AVERAGES FOR MODEL YEARS 1978–1995—Continued

(IN MPG)

Model year	Domestic			Import			All cars	All light trucks	Total fleet
	Car	Light truck	Combined	Car	Light truck	Combined			
1987	27.0	20.5	24.6	31.2	25.2	29.6	28.5	21.7	26.2
1988	27.4	20.6	24.5	31.5	24.6	30.0	28.8	21.3	26.0
1989	27.2	20.4	24.2	30.8	23.5	29.2	28.4	20.9	25.6
1990	26.9	20.3	23.9	29.9	23.0	28.5	28.0	20.8	25.4
1991	27.3	20.9	24.4	30.1	23.0	28.4	28.4	21.3	25.6
1992	27.0	20.5	23.8	29.2	22.7	27.9	27.9	20.8	25.1
1993	27.8	20.7	24.2	29.6	22.8	28.1	28.4	21.0	25.2
1994	27.3	20.4	23.5	29.6	22.0	27.8	28.2	20.6	24.6
1995	27.7	20.1	23.7	29.9	21.6	27.6	28.5	20.4	24.7

Figure II-4



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Since MY 1980, the total light truck fleet average fuel economy and the average for domestic light truck manufacturers have improved overall, but both have remained below the fuel economy level for the imported light truck fleet. The imported light truck average fuel economy has decreased significantly since its highest level of 27.4 mpg for MY 1981 to 21.6 mpg for MY 1995. For MY 1995, the domestic light truck fleet has an average fuel economy level of 20.1 mpg, which is 1.5 mpg lower than the import light truck fleet. For MY 1995, the imported light truck fleet fuel economy decreased 0.4 mpg below the MY 1994 level to 21.6 mpg. The domestic manufacturers continued to dominate the light truck market, comprising 85 percent of the total light truck fleet.

The disparity between the average CAFEs of the import and domestic manufacturers has declined in recent years as domestic manufacturers maintain relatively stable CAFE values while the import manufacturers move to larger, higher performance vehicles, and more 4-wheel drive light trucks.

Section III: 1995 Activities

A. Passenger Car CAFE Standards

The following synopsis describes recent litigation challenging NHTSA actions under the CAFE program.

Competitive Enterprise Institute v. *NHTSA*, D.C. Cir., No. 93–1210

This case involves a challenge by the Competitive Enterprise Institute (CEI) to NHTSA's January 15, 1993, decision to again terminate rulemaking the agency commenced to consider amending the MY 1990 passenger car CAFE standard. The D.C. Circuit had reversed NHTSA's original termination decision in 1992. *Competitive Enterprise Institute* v. *NHTSA*, 956 F.2d 321, (D.C. Cir. 1992). On February 3, 1995, the court issued a unanimous decision dismissing the petition for review and upholding the agency's decision not to amend the MY 1990 passenger car CAFE standard. *Competitive Enterprise Institute* v. *NHTSA*, 45 F.3d 481, (D.C. Cir. 1995). CEI filed a petition for rehearing on March 20, 1995, the agency filed its response, opposing rehearing, on April 24, 1995. On May 17, 1995, the Court denied rehearing and rehearing *en banc*.

B. Light Truck CAFE Standards

The agency issued an advance notice of proposed rulemaking for Light Truck Average Fuel Economy Standards for MYs 1998–2006 (59 FR 16324; April 6, 1994). The agency sought information that would help to assess the extent to which manufacturers can improve light truck fuel economy, the benefits and costs to consumers of improved fuel economy, the benefits to the Nation of reducing fuel consumption, and the number of model years that should be covered by the proposal.

The Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 1996, P.L. 104–50, directed the agency not to expend funds ''to prepare, propose, or promulgate any regulations * * * prescribing CAFE standards for automobiles, as defined in such title, in any model year that differs from standards promulgated for such automobiles prior to enactment of this section.'' The Act was passed while the agency was considering the MY 1998 light truck standard. Subsequently, the agency issued a notice of proposed rulemaking proposing a light truck fuel economy standard for MY 1998 of 20.7 mpg, which is the current standard. A final rule will be issued early in 1996.

C. Low Volume Petitions

49 U.S.C. 32902(d) provides that a low volume manufacturer of passenger cars may be exempted from the generally applicable passenger car fuel economy standards if these standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. A low volume manufacturer is one that manufactured fewer than 10,000 passenger cars worldwide, in the model year for which the exemption is sought (the affected model year) and in the second model year preceding that model year.

NHTSA acted on four low volume petitions in 1995, which were filed by Bugatti International Holding, SA (Bugatti International), MedNet, Inc., Rolls-Royce, and Lamborghini.

Bugatti International filed a joint low volume petition for Bugatti and Lotus high performance vehicles. Bugatti International requested alternative standards for its passenger cars for MYs 1994, 1995, and 1996. Because of the financial instability of Bugatti, Lotus resubmitted to the agency its own low volume petition. The agency is reviewing Lotus' petition and will respond in early 1996.

MedNet, Inc., requested an alternative standard for its recently acquired Dutcher PTV vehicles for MYs 1995, 1996, and 1997. NHTSA established an alternative standard of 17.0 mpg for the three model years (60 FR 47877; September 15, 1995).

Rolls-Royce requested an alternative standard for its passenger cars for MY 1997. NHTSA issued a proposed decision to grant an alternative standard of 15.1 mpg for MY 1997 (60 FR 37861; July 24, 1995).

Lamborghini filed a joint low volume petition for Lamborghini and Vector high performance vehicles. Lamborghini requested alternative standards for its passenger cars for MYs 1995, 1996, and 1997. NHTSA is reviewing this petition and will respond in early 1996.

Rolls Royce filed a low volume petition for MYs 1998 and 1999 in December 1995. NHTSA will respond to this petition during 1996.

D. Enforcement

49 U.S.C. 32912(b) imposes a civil penalty of $5 for each tenth of a mpg by which a manufacturer's CAFE level falls short of the standard, multiplied by the total number of passenger automobiles or light trucks produced by the manufacturer in that model year. Credits that were earned for exceeding the standard in any of the three model years immediately prior to or subsequent to the model years in question can be used to offset the penalty.

Table III–1 shows the most recent CAFE fines paid by manufacturers. Final CAFE figures for MY 1994 were not available for most manufacturers.

TABLE III–1.—CAFE FINES COLLECTED DURING FY 1995

Model year	Manufacturer	Amount fined	Date paid
1990	Callaway Cars, Inc.	($20,400)	12/94
	Consulier Industries	50	01/95
1991	Maserati	1,600	12/94
	Consulier Industries	50	01/95
1992	Mercedes-Benz	18,122,440	12/94
	Consulier Industries	50	01/95
1993	Peugeot	910	10/94
	Porsche	668,500	10/94

TABLE III–1.—CAFE FINES COLLECTED DURING FY 1995—Continued

Model year	Manufacturer	Amount fined	Date paid
	Mercedes-Benz	13,531,590	12/94
	Land Rover	1,094,660	01/95
	Autokraft Ltd	2,590	08/95
	BMW	7,427,160	09/95
1994	Mercedes-Benz	11,254,080	12/94
1995	Mercedes-Benz	7,498,995	12/94

E. Partnership for a New Generation of Vehicles (PNGV)

The agency has been assisting, within existing resources, the PNGV participants in the early stages of subsystem development and systems analysis in support of the objectives of the program. In addition to limited staff participation by NHTSA and the Volpe National Transportation Systems Center (Volpe Center) in selected materials and systems analysis activities, the Department, along with the Department of Commerce, has funded the National Research Council's annual review of the PNGV program.

The Joint Conference Report on the DOT budget for FY 1996 removed funds for agency support of PNGV activities in safety and infrastructure analysis. The reasoning for this deletion of funds was that the Congress felt that the agency did not need funds until the PNGV vehicles were further defined. Nevertheless, the agency will continue to make its staff available wherever they can be of use in the PNGV program.

F. Advisory Committee on Personal Motor Vehicle Greenhouse Gas Reductions

As part of the Administration's ''Climate Change Action Plan,'' the White House formed a one-year advisory committee to develop recommendations to reduce greenhouse gas emissions by light vehicles to the year 1990 level. The committee comprised 29 members representing environmental and public interest groups, automotive manufacturers, fuel suppliers, vehicle users, and state and local governments.

The goal of the committee was to develop policy options that will cost-effectively reduce greenhouse gas emissions from the use of light vehicles (cars and light trucks) to the 1990 level by years 2005, 2015, and 2025. These policy options encompassed reductions in vehicle-miles-traveled (VMT), vehicle efficiency enhancement, and alternative fuels. The committee examined:

- vehicle technologies;
- fuels with lower carbon content;
- vehicle-based regulatory strategies such as CAFE;
- vehicle taxes and/or rebates;
- market-based actions to reduce VMT (fuel taxes, congestion; and pricing, and pay-at-the-pump insurance)
- other approaches (e.g., changed land-use patterns, increased mass transit, telecommuting, Intelligent Transportation Systems (ITS), and increased carpooling).

On September 20, 1995, the advisory group conducted its final meeting and failed to form a consensus report for the Administration on the recommendation to reduce light vehicle greenhouse gas emissions.

G. Contract Activities

During 1995, NHTSA continued to fund the maintenance of a database that details the finances, products, and production capacities of North American automobile manufacturing plants. This program is administered by the Volpe Center with annual funding of $60,000.

In response to a request in the Conference Report on the FY 1995 DOT Appropriations Act, NHTSA also initiated a study of the unique capabilities, uses, and utility requirements of light trucks that result in design constraints for fuel economy improvement. This study is also being conducted by the Volpe Center, using the $300,000 appropriation designated by Congress for the study. The final report will be available early in 1996.

Finally, the agency has awarded a small contract of $46,750 to study the potential fuel economy improvements that could be achieved by the application of variable valve timing to conventional engines. This study will include an analysis of the cost implications of the technology. The report will be published in 1996.

Section IV: Use of Advanced Technology

This section fulfills the statutory requirement of Section 305 of Title III of the Department of Energy Act of 1978 (P.L. 95–238), which directs the Secretary of Transportation to submit an annual report to Congress on the use of advanced technologies by the automotive industry to improve motor vehicle fuel economy. This report focuses on the introduction of new models, advances in engine and transmission technology, the application of materials to save weight, and the advances in electronic technology which improved fuel economy in MY 1995.

A. New Models

Domestic auto manufacturers introduced a number of significant new products and made major changes to several existing models for MY 1995. Chrysler replaced its compact Sundance and Shadow models with the Neon which has a larger interior, but weighs about 100 lbs less and achieves an average fuel economy of over 34 mpg, 5.5 mpg higher than the predecessor models. Chrysler also replaced the mid-size Spirit and Acclaim with the Dodge Stratus and Chrysler Cirrus. These models weigh about the same as their predecessors, but the average fuel economy is about 1 mpg lower due to more emphasis on higher performance engine options. Chrysler introduced the Chrysler Sebring and Dodge Avenger sports coupes which averaged 27.7 mpg. They replace certain Chrysler LeBaron models and the Dodge Daytona which had been previously discontinued. Both cars are produced for Chrysler by Mitsubishi at its Illinois assembly plant. Mitsubishi also produced a new Eagle Talon for Chrysler which has better performance and improved aerodynamics, but is similar to the previous model in fuel economy.

Ford introduced a front-wheel drive minivan, the Windstar, supplementing the Aerostar rear-wheel drive model which remains in production. The Windstar achieved an average fuel economy of 22.8 mpg, 1 mpg better than the Aerostar. The Ford Explorer sport utility was restyled for MY 1995 and included dual airbags, side door beams, and redesigned front suspension. The new Explorer weighs an average of about 250 lbs more than its predecessor, but achieves about the same fuel economy. The Ford Tempo/Mercury Topaz model was replaced by an entirely new model, the Ford Contour/Mercury Mystique, and featured new

engines and transmissions, as well. This is a world car program with a European counterpart known as the Ford Mondeo. The Contour/Mystique is over 200 lbs heavier than the Tempo/Topaz, but fuel economy is better by about 2.5 mpg. Ford also redesigned the Lincoln Continental which becomes the first front-wheel drive Ford product to use a V–8 engine. The engine is a 4-valve-per-cylinder dual overhead cam (DOHC) design. The Continental has dual airbags, four-wheel disc brakes, a load leveling suspension, and driver-selected modes for power steering effort and ride control. The new model weighs about 400 lbs more than the 1994 model, and the fuel economy is about 0.8 mpg lower.

The General Motors Blazer and Jimmy compact sport utilities were restyled for improved aerodynamics and featured better ride and handling. The new models achieved about the same fuel economy as the 1994 models. A 4-door model was added to the large sport utility models of the Chevrolet Tahoe and GMC Yukon. This 4-door model is lighter and 14 in. shorter than the Suburban and is also available with either 2WD or 4WD. The subcompact Geo Metro was redesigned to have a larger interior and a 4-cylinder engine in the 4-door models. The weight of the new models increases by 200 lbs. and the fuel economy declines to an average of 44 mpg, still one of the best in the industry. The compact Chevrolet Cavalier and Pontiac Sunfire were completely redesigned for the first time since their introduction in 1982. The new models have longer wheelbases, but shorter overall length, offer an optional 4-valve-per-cylinder engine, and have an average fuel economy more than 1 mpg higher than the 1994 models. Compared to the original 1982 models, the 1995 Cavalier/Sunfire models weigh about 250 lbs more due to a higher content of convenience, safety, and emissions equipment but still deliver about 1.8 mpg more in fuel economy. The mid-size Chevrolet Lumina was extensively redesigned and the coupe was redesignated as the Monte Carlo. The weight remains about the same, but the average fuel economy has declined by about 0.5 mpg. Finally, GM introduced entirely new mid-size Buick Riviera and Oldsmobile Aurora models. These replace the Riviera and Toronado models that were discontinued after MY 1993. The Riviera uses a significantly redesigned version of the pushrod 3.8 L V–6 engine with a supercharger option while the Aurora uses a new 4 L DOHC V–8. Both models are heavier and have lower fuel economies than their predecessors.

Among the import manufacturers, BMW redesigned its 7-series models for greater body rigidity, improved suspension, longer wheelbase, and dual airbags. The average weight of the series is unchanged, but the fuel economy has improved by about 0.6 mpg.

Honda introduced its first minivan, the Odyssey, which was based on the Accord platform. It has 3 rows of seats, accommodating up to 7 passengers and an average fuel economy of 25.5 mpg.

Hyundai introduced a redesigned mid-size Sonata model with a new platform, interior, suspension, longer wheelbase, and dual airbags. Fuel economy improved by about 0.8 mpg. Hyundai also replaced its subcompact Excel with a compact Accent model. This model also features a new suspension, dual airbags, and a longer wheelbase. Average fuel economy is improved by about 1 mpg to 36.9 mpg.

Another South Korean Manufacturer, Kia, expanded its line of vehicles offered for sale in the U.S. by adding a compact sports utility model, the Sportage. The Sportage is available in both 2WD and 4WD versions and averaged 25.5 mpg for MY 1995.

Mazda introduced a redesigned compact Protege with dual airbags, a larger interior, two optional DOHC engines, and an average fuel economy that, at 35.5 mpg, was 3 mpg higher than the previous model. Mazda also introduced a new line of sedans called the Millenia. One of the engine options on the Millenia is the 2.3 L, 4-valve-per-cylinder, DOHC Miller cycle V–6 with a supercharger. This model achieves about 1 mpg better fuel economy than the conventional 2.5 L standard engine.

As a companion to the Eagle Talon, Mitsubishi introduced a redesigned Eclipse sports model. It was over 100 lbs heavier than the predecessor model, but achieved about the same fuel economy.

Nissan introduced major redesigns of three passenger car lines for MY 1995: the Sentra, the 240SX, and the Maxima. All three lines now include dual airbags, and each has a fuel economy rating of about 2 mpg higher than the previous model and a larger interior volume. The Maxima includes a redesigned 3 L DOHC V–6 engine.

Land Rover introduced the first major redesign in 25 years of its luxury sport utility, the Range Rover 4.0 SE. The new model has better ride and handling, dual airbags, and somewhat higher fuel economy with the redesigned 4 L V–8 engine.

The compact Subaru Legacy was redesigned to include greater interior volume and dual airbags. Fuel economy improved by over 1 mpg on both the 2WD and 4WD versions of this model.

The subcompact Suzuki Swift was redesigned like the companion Geo Metro to have a longer wheelbase, larger interior, and dual airbags. Average fuel economy increased by nearly 1 mpg to 44.4 mpg.

Toyota's new models for MY 1995 included a redesign of the subcompact Tercel to include dual airbags and a new 1.5 L 4- valve-per-cylinder DOHC engine that yielded an average fuel economy of 39.5 mpg, nearly 4 mpg higher than the 1994 model. Toyota also introduced the new Avalon, Toyota's first large car with 6-passenger seating. Its fuel economy averaged 26.9 mpg, one of the highest values for a large car. Toyota's Lexus LS400 was redesigned to have a longer wheelbase, larger interior, and a new 4 L V–8. The LS400 is lighter by about 250 lbs and delivers nearly 2 mpg higher fuel economy than its predecessor. Toyota's compact pickup line was redesigned for MY 1995 and renamed the Tacoma. The base engine for the 4WD models was enlarged to 2.7 L and the optional engine on both lines is a new 3.4 L DOHC V–6. The 4WD models are lighter and achieve about 0.5 mpg higher average fuel economy. The 2WD models, however, weigh about the same as their predecessors, but have about 1 mpg lower average fuel economy.

Volkswagen redesigned its compact Passat line to be mid-size without changing the average weight or fuel economy of these models. The Cabriolet model was replaced after a year's absence with a new, larger Cabrio model that weighed about 300 lbs more but achieved nearly the same fuel economy as the 16-year old design.

B. Engine and Transmission Technology

Several new engine designs and some significant engine redesigns were introduced on light vehicles for sale in the U.S. for MY 1995. The new engines for Chrysler include a 2 L, 4-valve-per-cylinder, 4-cylinder engine for use in the Neon, the Stratus, and the Talon in various versions. It is produced in single-overhead camshaft (SOHC) and DOHC configurations, and the DOHC design is offered in naturally aspirated and turbocharged versions. Another new Chrysler engine is a similar, but larger, 2.4 L DOHC, 4-valve, 4-cylinder engine with a balance shaft for the Cirrus and Stratus. Chrysler also introduced a 2.5 L SOHC, 4-valve V–6 for the Cirrus and Stratus. All of these engines use cast iron blocks with aluminum cylinder heads. The 2 L DOHC engine has the highest specific

output of any naturally aspirated engine that Chrysler has ever produced.

Ford developed two new engines for its new Contour and Mystique models—the 2 L 4-cylinder ''Zetec,'' and the 2.5 L V–6 ''Duratec.'' Both engines use 4 valves per cylinder. The Zetec is SOHC with cast iron block and aluminum cylinder head while the Duratec is DOHC with aluminum block and cylinder heads. Ford claims the Duratec engine is the smallest and lightest V–6 engine in the world for its displacement, and Ford has established a 100,000-mile interval for major service of the engine. A significant engine modification at Ford was the adaptation of the 4.6 L DOHC 4-valve V–8 for a transverse, FWD installation for the Lincoln Continental. This is Ford's first application of a V–8 engine in a FWD car. This engine was previously used only in the rear-wheel drive Mark VIII.

GM introduced a 4 L version of its Premium V engine family for the Oldsmobile Aurora. This engine is a DOHC V–8 with 4 valves per cylinder and uses an aluminum block and cylinder heads. A 1.3 L SOHC 4-cylinder was added to the Geo Metro line to augment the previous 1 L 3-cylinder engine. The engine has an aluminum block and cylinder head and produces 40 percent more horsepower than the 3-cylinder. GM also refined the 2.3 L Quad 4 engine by adding two balance shafts to reduce the engine vibration. The GM 3.8 L V–6 received extensive improvements with larger valves, lighter pushrod valve train, and a lower, lighter engine block. The redesigned engine produces more power, better fuel economy, and less emissions than its predecessor.

Mazda introduced a modification of the conventional spark ignition engine called the ''Miller cycle.'' By using a late closing of the intake valves coupled with a supercharger, the Miller cycle design reduces pumping losses while retaining high power and mid-range torque. The optional 2.3 L DOHC 4-valve V–6 Miller cycle engine produces better fuel economy and better performance in the Mazda Millenia than the similar, but conventional cycle, 2.5 L standard engine. Mazda also claims that its Miller cycle engine will have 1.3 times better durability than conventional engines.

Mercedes-Benz introduced a 4-valve-per-cylinder, naturally aspirated diesel engine with a catalytic converter that meets 50 state emissions standards. The new engine is an indirect injection design with a variable resonance intake manifold to improve the torque performance. It was offered in the 3,500-lb E300 sedan where it achieved an average fuel economy of 34.2 mpg, the highest fuel economy of any car of over 2,700 lbs curb weight.

Nissan developed a 3 L DOHC V–6 ''VQ'' engine with aluminum block and cylinder heads for use in its Maxima passenger cars. The engine has lower internal friction and lighter rotating parts than its predecessor, resulting in improved performance and fuel economy for the Maxima. This engine is expected to be produced in other sizes in the future for other Nissan models.

Saab began offering its ''Light Pressure Turbo (LPT)'' 2.3 L engine in U.S. models of the 9000. This engine has a lower turbocharger boost pressure that achieves better fuel economy with smoother power flow by reducing the typical turbocharger lag. The Saab 9000 with this LPT engine had the best fuel economy of any large car in MY 1995.

New transmissions for MY 1995 include the Ford 4-speed automatic for the Contour and Mystique which features a belt-rather than gear-drive to the final drive. Ford claims this electronically controlled transmission is the most compact 4-speed automatic for its torque capacity. Ford also designed a new 5-speed manual transmission for these models that has low friction bearings and is synchronized in all gears. GM developed its first 4-speed transverse automatic transmission for use in compact cars.

C. Electronics

As electronic devices for safety and convenience proliferate, much of the improvements in electronics are centered on further integration of the control systems. MY 1995 saw an increase in the application of anti-lock braking systems, traction control, anti-theft devices, and remote locking systems. New or more advanced electronic systems are being applied to engine diagnostics, more sophisticated air bag systems, vehicle stability controls, and navigation systems. The auto industry and its suppliers are developing computers, integrated circuits, and multiplex wiring to simplify and improve the operation of the variety of electronic systems contained in the modern vehicle.

D. Materials

Although the average weight of the new passenger car and light truck fleets increased for MY 1995, auto manufacturers introduced significant new applications of lighter or stronger materials that precluded greater weight increases on some models. According to information included in Ward's Automotive Yearbook 1995, several materials have increased their share of the composition of the typical family vehicle between 1990 and 1995. These materials include high- and medium-strength steel, stainless steel, plastics and plastic composites, aluminum, powder metal (PM), magnesium, and glass. These increases have been at the expense of several of the more traditional automotive materials: regular steel, cast iron, copper and brass, and zinc.

Some of the notable applications of lighter or stronger materials are discussed in the following paragraphs.

Examples of new model uses of high- and medium-strength steels include medium-strength steel for the hood, door, and rear-hatch outer panels of the Eagle Talon/Mitsubishi Eclipse and high-strength steel for the longitudinal frame rails. The front door inner panels and hinge reinforcements of the Dodge/Plymouth Neon are high-strength steel. Ford uses bake-hardenable medium-strength steel for outer body panels on the Windstar minivan and the Contour and Mystique sedans.

New applications for plastics for MY 1995 have been mainly in small parts and conversions from one type of plastic to another. Some of the notable applications include sheet molding composite (SMC) hoods for the Ford Windstar and hoods and front fenders for the Lincoln Continental. Plastic intake manifolds are widely used, and new applications for MY 1995 include the Ford 2 L, 16-valve engine, the Cadillac Northstar and Olds Aurora V–8s, and the Ford Windstar 3.8 L V–6.

Much of the growth in use of aluminum in MY 1995 vehicles can be attributed to Ford Motor Company applications. The Duratec V–6 engine for the Contour/Mystique models is the first U.S.-production 6-cylinder engine with both the block and heads of aluminum. The new Lincoln Continental uses the Ford modular V–8 for the first time, and this engine contains about 70 lbs of aluminum. The restyled Ford Crown Victoria and Mercury Grand Marquis use aluminum deck lids. Aluminum wheels are standard equipment on more cars from all manufacturers and are also popular options. Also of note is the Ford test fleet of 20 Mercury Sables designed with aluminum body structures and body panels. These vehicles weigh about 400 lbs less than the production Sable and are being evaluated extensively in a 42-month program with a number of organizations at a variety of locations.

PM connecting rods are approaching universal application in U.S. production spark ignition engines. New for MY

1995 are PM connecting rods for the Ford Duratec V–6, 3.8 L V–6, and the modular V–8 for the Lincoln Continental. Chrysler uses PM for the connecting rods of the 2 and 2.4 L engines, and GM added PM rods to the Aurora and Northstar Premium V engines which completes GM's conversion to PM connecting rods. GM also used PM gears for the parking brake of its new 4-speed automatic transmission for small cars.

The GM Aurora V–8 engine uses magnesium camshaft covers, baffles, and oil filter adapters for MY 1995. Ford uses magnesium for some of the seat stanchions for the Windstar minivan. On the experimental side, Chrysler built a light-weight version of the Neon compact car, reducing the weight by 600 lbs. This vehicle employs an aluminum body and engine block but also uses magnesium for seat frames, instrument panel structures, and parts of the steering column.

E. Summary

The continued availability and low cost of gasoline has encouraged the production and sale of larger, heavier passenger cars and light trucks. The increased popularity of light trucks relative to passenger cars and the popularity of accessories that add weight and draw additional power from the engine have reduced the fuel economy of the vehicles. Nevertheless, there was still progress in improving fuel economy evident in many new model introductions. Much of the improvement was due to innovations in engine technology, but there was also some weight reduction accomplished through more efficient packaging design and the use of lighter or stronger materials.

[FR Doc. 96–10963 Filed 5–3–96; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–11; Notice 2]

Decision that Nonconforming 1990 Porsche 944 S2 2-Door Hatchback Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1990 Porsche 944 S2 2-door hatchback passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1990 Porsche 944 S2 2-door hatchback passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1990 Porsche 944 S2 2-door hatchback), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective May 6, 1996.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

LPC of New York, Inc. of Ronkonkoma, New York (Registered Importer R–96–100) petitioned NHTSA to decide whether 1990 Porsche 944 S2 2-door hatchback passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on February 22, 1996 (61 FR 6891) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–152 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1990 Porsche 944 S2 2-door hatchback not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1990 Porsche 944 S2 2-door hatchback originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 30, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–11112 Filed 5–3–96; 8:45 am]

BILLING CODE 4910–59–M

Surface Transportation Board [1]

[Docket No. AB–57 (Sub-No. 33X)]

Soo Line Railroad Company—Abandonment Exemption—in the Counties of Beltrami, Clearwater, and Polk Counties, MN

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Board exempts from the requirements of

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903. Therefore, this notice applies the law in effect prior to the Act, and citations are to the former sections of the statute, unless otherwise indicated.

49 U.S.C. 10903–04 the abandonment by the Soo Line Railroad Company of 40.39 miles of rail line between milepost 410.70 near Gully and milepost 370.31 at Bemidji, MN, subject to: (1) standard labor protection conditions; and (2) a public use condition.

DATES: The exemption will be effective June 5, 1996, unless stayed or a formal statement of intent to file an offer of financial assistance (OFA) is filed. Statements of intent to file an OFA [2] under 49 CFR 1152.27(c)(2) and requests for a notice of interim trail use/rail banking under 49 CFR 1152.29 must be filed by May 16, 1996; petitions to stay must be filed by May 21, 1996; petitions to reopen must be filed by May 31, 1996.

ADDRESSES: An original and 10 copies of all pleadings referring to Docket No. AB–57 (Sub-No. 33X) must be filed with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, D.C. 20423; in addition, a copy of all pleadings must be served on petitioner's representative: Larry D. Starns, Esq., General Attorney, 1000 Soo Line Building, 105 South 5th Street, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call or pick up in person from: DC NEWS & DATA, INC., Surface Transportation Board, 1201 Constitution Avenue, N.W., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: April 16, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–11219 Filed 5–3–96; 8:45 am]

BILLING CODE 4915–00–P

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

federal register

Monday
May 6, 1996

Part II

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

Uniform Rules of Practice and Procedure; Final Rules

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 19

[Docket No. 96–10]

RIN 1557–AB43

Uniform Rules of Practice and Procedure

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

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its regulatory provisions implementing the Uniform Rules of Practice and Procedure (Uniform Rules) and the OCC's agency-specific rules of administrative practice and procedure (Local Rules).

The final rule is intended to clarify certain provisions and to increase the efficiency and fairness of administrative hearings. The final rule is another component of the OCC's Regulation Review Program.

EFFECTIVE DATE: June 5, 1996.

FOR FURTHER INFORMATION CONTACT: Daniel Stipano, Director, Enforcement and Compliance Division, 202–874–4800, or Daniel Cooke, Attorney, Legislative and Regulatory Activities, Division, 202–874–5090, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

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, The Office of Thrift Supervision (OTS), the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System (Board), and the National Credit Union Administration (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 in using the rules since then, the agencies have identified sections of the Uniform Rules that should be modified. Accordingly, the agencies proposed amendments to the Uniform Rules on June 23, 1995 (60 FR 32882). The OCC also proposed amendments to its Local Rules.

The OCC received two comments on the proposal. Both commenters generally supported the proposal, but each suggested improvements.

The final rule implements the proposal with certain changes, including revisions responsive to some of the concerns expressed by the commenters. The following section-by-section analysis summarizes the final rule and highlights the changes from the proposal that the OCC made in response to the commenters' suggestions.

The OTS, FDIC, Board, and NCUA are publishing separate final rules that are substantively identical to the OCC's final rule.

Section-by-Section Summary and Discussion of Amendments to the Uniform Rules

Section 19.1 Scope

The proposal added two statutory provisions to the list of civil money penalty provisions to which the Uniform Rules apply. The 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, amended 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, amended section 102 the Flood Disaster Protection Act of 1973 (FDPA) (42 U.S.C. 4012a). Section 102 now gives each ''Federal entity for lending regulation'' authority to assess civil money penalties against a regulated lending institution if the institution has a pattern or practice of committing violations under the FDPA or the notice requirements of the National Flood Insurance Act of 1968 (NFIA) (42 U.S.C. 4104a). Under the FDPA, the term ''Federal entity for lending regulation'' includes the agencies and the Farm Credit Administration.

CDRI section 525 also gave the agencies authority to require a regulated lending institution to take remedial actions that are necessary to ensure that the institution complies with the requirements of the national flood insurance program if: (1) the institution has engaged in a pattern and practice of noncompliance with regulations issued pursuant to the FDPA and NFIA; and (2) has not demonstrated measurable improvement in compliance despite the assessment of civil money penalties. The final rule adds a new paragraph to the scope section that reflects this additional authority.

The OCC received no comments on this section, which is adopted as proposed.

Section 19.6 Appearance and Practice in Adjudicatory Proceedings

The proposal permitted the administrative law judge (ALJ) to require counsel who withdraws from representing a party to accept service of papers for that party until either: (1) a new counsel has filed a notice of appearance; or (2) the party indicates that he or she will proceed on a *pro se* basis.

The OCC received one comment on this section. The commenter suggested that the proposal did not adequately address certain situations: for example, when counsel withdraws because of a lack of payment of legal fees that is caused by an agency asset freeze, or withdraws because the client discharged him or her. The commenter's implication is that it is unfair to require counsel to continue to accept service in these situations. Moreover, the commenter expressed concern that the administrative proceeding may become involved in a dispute between the client and counsel when the ALJ requires counsel to continue to accept service after a client discharges counsel. The commenter suggested that the rule should require that service be given to both the unreplaced counsel and the party.

The proposal was intended to ensure that a lawyer is always available to receive service in order to prevent a party from halting the administrative proceedings simply by evading service. The regulatory text is clear, however, that the ALJ has the discretion whether to require former counsel to continue to accept service. Fairness to counsel is among the factors the ALJ would consider in exercising this discretion, and the OCC therefore believes that the provision as proposed is sufficiently flexible to accommodate the concerns raised by the commenter.

The final rule changes the proposal's reference from ''service of process'' to ''service'' to clarify that this section applies to all papers that the party is entitled to receive. This section is otherwise adopted as proposed.

Section 19.8 Conflicts of Interest

The proposal sought to improve in two ways the provisions governing the

[1] The agencies issued a joint notice of proposed rulemaking on, June 17, 1991 (56 FR 27790). The agencies issued their final rules on the following dates: OCC on August 9, 1991 (56 FR 38024); Board 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).

conflicts of interest that may arise when counsel represents multiple persons connected with a proceeding.

First, the proposal sought to protect the interests of individuals and financial institutions by expanding the circumstances under which counsel must certify that he or she has obtained a waiver from each non-party of any potential conflict of interest. The former rule required counsel to obtain waivers only from non-party institutions ''to which notice of the proceedings must be given.'' The proposal required counsel to obtain waivers from all parties and non-parties that counsel represents on a matter relevant to an issue in the proceeding. It thus ensured that all appropriate party and non-party individuals and institutions are informed of potential conflicts.

Second, the proposal simplified this provision by eliminating the requirement for counsel to certify that each client has asserted that there are no conflicts of interest. The OCC believes that the former provision was superfluous because the responsibility for identifying potential conflicts resides with counsel.

The OCC received one comment on this section. The commenter noted that the proposal may inhibit multiple representation that otherwise complies with applicable ethics rules. The commenter suggested that the proposal could inappropriately tilt the proceeding in favor of the agencies.

The provision does not limit the right of any party to representation by counsel of the party's choice. Rather, it ensures that all interested persons are informed of potential conflicts so that they may avoid the conflict if they choose. In the OCC's view, it is reasonable to establish a baseline standard requiring the affirmative waiver of conflicts by all affected persons or entities in order to ensure the integrity of the administrative adjudication process. State rules of professional responsibility that impose more stringent ethical standards are unaffected by this requirement.

In addition, the OCC is unpersuaded by the argument that the conflicts provision grants the agencies significant advantage in a proceeding. Persons and entities may be well and vigorously represented even if they are not all represented by the same counsel.

Therefore, the OCC adopts this section as proposed.

Section 19.11 Service of Papers

The proposal changed this section by permitting parties, the Comptroller, and ALJs to serve a subpoena on a party by delivering it to a person of suitable age and discretion at a party's place of work.

The OCC received one comment on this section. The commenter supported the intent of the proposal, but asserted that the provision permitting service at a person's place of work was too broad to be effective, particularly where a bank has numerous branches.

The OCC interpreted the phrase ''person's place of work'' as used in the proposal to mean the physical location at which an individual works and not as any office of the corporation or association that employs the person. To avoid confusion, the OCC has added specific reference to physical location to the regulatory text. In addition, the final rule states expressly that only an individual, not a corporation or association, may be served at a residence or place of work.

The same comment points out, however, that the former Uniform Rules did not expressly permit certain methods of service that are useful for serving a corporation or other association. The final rule, therefore, permits service on a party corporation or other association by delivery of a copy of a notice to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The final rule also provides that, if the agent is one authorized by a statute to receive service and the statute so requires, the serving party must also mail a copy to the party. The final rule also restructures this provision for clarity.

Section 19.12 Construction of Time Limits

The proposal clarified that the additional time allotted for responding to papers served by mail, delivery service, or electronic media transmission under § 19.12(c) is not included in determining whether an act is required to be performed within ten days. The proposal also clarified that additional time allotted for responding to papers served by mail, delivery, or electronic media transmission is counted by calendar days and, therefore, a party must count Saturdays, Sundays, and holidays when calculating a time deadline.

The OCC received no comments on this section, which is adopted as proposed.

Section 19.20 Amended Pleadings

The proposal changed this section to permit a party to amend its pleadings without leave of the ALJ and to permit the ALJ to admit evidence over the objection that the evidence does not fall directly within the scope of the issues raised by a notice or answer.

The OCC received one comment on this section. The commenter asserted that the change could unduly prejudice a party if a notice were amended to add or delete allegations immediately prior to the hearing. The commenter expressed concern that the amendment would give a party insufficient time to seek additional discovery or file for summary judgment.

The regulatory text gives the ALJ discretion to revise the hearing schedule to ensure that no prejudice results from last minute amendments to a notice. The OCC believes this approach is adequate to avoid prejudice to a party and, therefore, the OCC adopts this section as proposed.

Section 19.24 Scope of Document Discovery

The former Uniform Rules were silent on the use of interrogatories. The proposal expressly prohibited parties from using interrogatories on grounds that other discovery tools are more efficient and less burdensome and therefore more appropriate to administrative adjudications.

The proposal also sought to focus document discovery requests so that they are not unreasonable, oppressive, excessive in scope, or unduly burdensome to any of the parties.

Accordingly, the proposal preserved the former rule's limitation on document discovery by permitting discovery only of documents that have material relevance. However, the proposal specifically provided that a request should be considered unreasonable, oppressive, excessive in scope, or unduly burdensome if, among other things: (1) it fails to include justifiable limitations on the time period covered and the geographic locations to be searched; (2) the time provided to respond in the request is inadequate; or (3) 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 § 19.25.

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 OCC received no significant comments on this section and, therefore, adopts it as proposed.

Section 19.25 Request for Document Discovery From Parties

The OCC proposed several changes to § 19.25. First, the proposal sought to reduce unnecessary burden by permitting a party to: (1) respond to document discovery either by producing documents as they are kept in the ordinary course of business or by organizing them to correspond to the categories in a document request; and (2) identify similar documents by category when they are voluminous and are protected by the deliberative process, attorney-client, or attorney work-product privilege.

The proposal also amended § 19.25 to permit a party to require payment in advance for the costs of copying and shipping requested documents; and clarified that, if a party has stated its intention to file a timely motion for interlocutory review, the ALJ may not release, or order a party to produce, documents withheld on grounds of privilege until the motion for interlocutory review has been decided.

The OCC received two comments on this section. One commenter sought guidance on when, how, and to whom a party must express an ''intention'' to file a timely motion for interlocutory review.

Because it is the ALJ who may not release or order a party to produce documents, it was implicit in the proposed regulatory text that a party must make the intention to seek interlocutory review known to the ALJ. For clarity, the final rule adds language to this effect.

Another commenter suggested that a request for interlocutory review should automatically stay the proceeding.

Under § 19.28(d) of the Uniform Rules, a party may request that a proceeding be stayed during the pendency of an interlocutory review, and the ALJ has the discretion to decide whether a stay is appropriate. The OCC believes that this procedure adequately protects the parties. For this reason and to avoid adding unnecessary delays in the administrative proceedings, the OCC declines to provide for an automatic stay whenever a party requests interlocutory review.

One commenter asserted that permitting the OCC to require payment in advance for document copying and shipping costs would give the OCC an advantage over other creditors if the party is bankrupt following the administrative hearing. The commenter does not assert that it is a violation of the bankruptcy laws for the OCC or any other creditor to require prepayment for products or services. Moreover, the OCC believes that the situations causing the commenter's concern would be very rare. Accordingly, the OCC adopts this section as proposed.

Section 19.27 Deposition of Witness Unavailable for Hearing

The proposal clarified that a party may serve a deposition subpoena on a witness who is unavailable by serving the subpoena on the witness's authorized representative. The final rule does not include this proposed change because, in § 19.11(d), the final rule expressly permits a party to serve a subpoena by delivering the subpoena to an agent, which includes delivery to an authorized representative. The proposed change to § 19.27 would be redundant. The OCC received no comments on this section. The final rule does not, therefore, change this provision.

Section 19.33 Public Hearings

The proposal changed this section to specify that a party must file a motion for a private hearing with the Comptroller, and not the ALJ, but must serve the ALJ with a copy of the motion.

The OCC received no comments on this section, which is adopted as proposed.

Section 19.34 Hearing Subpoenas

The former Uniform Rules did not specifically require that a party inform all other parties when a subpoena is issued to a non-party. The proposal required 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. Under the proposal, any party may move to quash any hearing subpoena and must serve the motion on each other party.

The OCC received no comments on this section, which is adopted as proposed.

Section 19.35 Conduct of Hearings

The proposal limited the number of counsel permitted to examine a witness and clarified that hearing transcripts may be obtained only from the court reporter. The former Uniform Rules were silent on these issues.

The OCC received no comments on this section, which is adopted as proposed.

Section 19.37 Post-Hearing Filings

The proposal changed the title of this section from ''Proposed findings and conclusions'' to ''Post-hearing filings'' to describe more accurately the content of the section.

The proposal also moved, from § 19.35(b) to § 19.37(a), the provision that requires the ALJ to serve each party with notice of the filing of the certified transcript of the hearing (including hearing exhibits). The proposal added a requirement that the ALJ must use the same method of service for this notice for each recipient.

Finally, the proposal clarified 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.

The OCC received no comments on this section, which is adopted with a minor technical change.

Section 19.38 Recommended Decision and Filing of Record

Under the former Uniform Rules, the ALJ was not required to file an index of the record when he filed the record with the Comptroller. The proposal added this requirement and reorganized this section to improve its clarity.

The OCC received no comments on this section, which is adopted as proposed.

Section-by-Section Summary and Discussion of Proposed Amendments to the OCC's Local Rules

Section 19.112 Informal Hearing

Section 19.112 governs the conduct of informal hearings requested by a party who is the subject of a removal, suspension, or prohibition when a crime is charged or a conviction obtained.

The proposal amended § 19.112(b) so that the District Deputy Comptroller or Administrator, the Deputy Comptroller for Multinational Banking, or the Deputy Comptroller or Director for Special Supervision, whoever is appropriate, fixes the date, time, and place for an informal hearing and chooses the presiding officer.

The proposal amended § 19.112(c): (1) to clarify that, if a petitioner waives the opportunity to present an oral argument at a hearing, the OCC may file written submissions with the presiding officer no later than the date on which the hearing was to be held; and (2) to require a petitioner who chooses to waive the opportunity to present oral argument to submit that waiver at the same time that the petitioner requests a hearing.

Former § 19.112(d)(3) required that copies of all affidavits, memoranda, and other written material to be presented at the hearing be provided to the presiding officer and other parties ten days prior to the hearing. The final rule conforms § 19.112(d)(3) to the change made to § 19.112(c), which permits the OCC to file papers on the day of the hearing. Therefore, as amended, § 19.112(d)

allows the OCC an additional ten days to file its submissions when a petitioner chooses to waive its right to an oral hearing. The OCC will need the additional ten days to prepare its submissions as a response to the petitioner's submissions because the OCC will not have an opportunity to present an oral argument.

The OCC received one comment on this section. The commenter sought clarification of whether waiver of oral argument results in a waiver of the hearing.

The former rule and the proposal used the term ''hearing'' to refer to both an oral hearing and a hearing based solely on documents. A waiver of an oral argument does not result in a waiver of the hearing itself. Therefore, the OCC believes no further clarification is necessary and adopts this section with a minor technical change.

Section 19.113 Recommended and Final Decisions

The former Local Rules stated that 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 to notify a petitioner of the Comptroller's final decision within 60 days of the hearing. 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 clarified that the 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, regardless of when the Comptroller received the petitioner's written submission.

To ensure that the Comptroller can meet this 60-day deadline, the proposal imposed a clear time deadline on the presiding officer to issue a recommended decision. The proposal required the presiding officer to issue a recommended decision within 20 days from the hearing.

The OCC received no comments on this section, which is adopted as proposed.

Section 19.160 Scope

The proposal clarified the provision regarding the time permitted the OCC to communicate to the proposed acquiring party (filer) the OCC's disapproval of a change-in-control notice.

Former § 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 proposal stated that the OCC must mail the written notice within three days of making a disapproval decision.

The OCC received no comments on this section, which is adopted as proposed.

Section 19.161 Notice of Disapproval and Hearing Initiation

The proposal changed 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 changed the initiation procedures for change-in-control proceedings. Under the former OCC Local Rule, the OCC's notice of disapproval was both a licensing communication and the initial pleading in the action.

As proposed, the notice of disapproval would not serve as the OCC's initial pleading. Under the proposal, the Comptroller issues a hearing order after receiving a request for a hearing in response to a notice of disapproval. 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 made a technical correction by removing the phrase ''in civil money penalty proceedings'' from the heading of former paragraph (c)(2).

The OCC received no comments on this section, which is adopted as proposed with minor technical changes.

Section 19.170 Discovery Depositions

The proposal clarified that a party may have the court reporter record deposition testimony with a stenotype machine or an electronic sound recording device. The proposal modified the former rule to state expressly that, for good cause and with leave of the ALJ or upon agreement of the parties, a party may have the court reporter use any other method to record the deposition testimony.

The proposal specified that a written record of the witness's testimony must be made unless the parties agree otherwise, that all parties are entitled to receive a transcript of the witness's testimony, and that the party taking the deposition bears the cost of the recording and the transcription of that recording.

The OCC received no comments on this section, which is adopted with one clarifying change. The final rule specifies that each party is responsible for the cost of the copy of the transcript that the party receives and that the cost of these additional transcript copies does not fall on the party that requests the deposition.

Section 19.171 Deposition Subpoenas

The proposal added to the permissible methods of serving a deposition subpoena under § 19.171 the methods allowed in the Uniform Rules, § 19.11(d). As amended by this final rule, the Uniform Rules permit the following methods of 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 OCC received no comments on this section. The final rule conforms § 19.184 with § 19.11(d), as adopted in the final rule, by cross-referencing § 19.11(d).

Section 19.184 Service of Subpoena and Payment of Witness Fees

As in § 19.171, the proposal adopted the methods of service used in § 19.11(d). The OCC also received no comments on this section.

The final rule conforms this section, as it does § 19.171, to § 19.11(d) by cross-referencing § 19.11(d).

Technical Changes

The final rule makes several technical changes to the proposal that make the final rule specific to the OCC. These changes appear throughout the rule text. For example, bracketed references to the ''agency head'' have been replaced with ''the Comptroller'' and the blank part designation before each section number has been filled in with ''19.''

Regulatory Flexibility Act

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

This final rule imposes only procedural requirements in administrative adjudications. It contains no substantive requirements. It improves the Uniform Rules of Practice and Procedure and facilitates the

orderly determination of administrative proceedings. The changes in this final rule are primarily clarifications and impose no significant additional burdens on regulated institutions, parties to administrative actions, or counsel.

Executive Order 12866 Statement

The OCC has determined that this final rule is not a significant regulatory action as defined in Executive Order 12866.

Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) 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. The OCC has 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 has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Effective Date

Section 302 of the Riegle Community Development and Regulatory Improvement Act 1994 delays the effective date of regulations promulgated by the Federal banking agencies that impose additional reporting, disclosure, or other new requirements to the first date of the first calendar quarter following publication of the final rule. The OCC believes that section 302 is not applicable to this final rule, because the regulation does not impose any additional reporting or other requirements not already contained in the current version of the Uniform Rules or the Local Rules.

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 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. In § 19.1, paragraph (e)(9) is amended by removing ''and'' after the semicolon, new paragraphs (e)(11) and (e)(12) are added, paragraph (f) is redesignated as paragraph (g), and new paragraph (f) is added to read as follows:

§ 19.1 Scope.

* * * * *

(e) * * *

(11) Any provision of law referenced in section 102(f) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(f)) or any order or regulation issued thereunder; and

(12) Any provision of law referenced in 31 U.S.C. 5321 or any order or regulation issued thereunder;

(f) Remedial action under section 102(g) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(g)); and

* * * * *

3. In § 19.6, paragraph (a)(3) is revised to read as follows:

§ 19.6 Appearance and practice in adjudicatory proceedings.

(a) * * *

(3) *Notice of appearance.* Any individual acting as counsel on behalf of a party, including the Comptroller, shall file a notice of appearance with OFIA at or before the time that the 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 required by the administrative law judge, continue to accept service 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.

* * * * *

4. In § 19.8, paragraph (b) is revised to read as follows:

§ 19.8 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 § 19.6(a):

(1) That the counsel has personally and fully discussed the possibility of conflicts of interest with each such party and non-party; and

(2) That each such party and 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.

5. In § 19.11, paragraphs (c)(2) and (d) are revised to read as follows:

§ 19.11 Service of papers.

* * * * *

(c) * * *

(2) If a party has not appeared in the proceeding in accordance with § 19.6, the Comptroller or the administrative law judge shall make service by any of the following methods:

(i) By personal service;

(ii) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;

(iii) If the person to be served is a corporation or other association, by delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party;

(iv) By registered or certified mail addressed to the person's last known address; or

(v) By any other method reasonably calculated to give actual notice.

(d) *Subpoenas.* Service of a subpoena may be made:

(1) By personal service;

(2) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;

(3) By delivery to an agent, which, in the case of a corporation or other

association, is delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party;

(4) By registered or certified mail addressed to the person's last known address; or

(5) By any other method reasonably calculated to give actual notice.

* * * * *

6. In § 19.12, paragraphs (a), (c)(1), (c)(2), and (c)(3) are revised to read as follows:

§ 19.12 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 in paragraph (c) of this section, 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 Comptroller or the administrative law judge in the case of filing, or by agreement among the parties in the case of service.

7. Section 19.20 is revised to read as follows:

§ 19.20 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 Comptroller 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.

8. In § 19.24, paragraphs (a) and (b) are revised to read as follows:

§ 19.24 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 I 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 § 19.25.

* * * * *

9. In § 19.25, paragraphs (a), (b), (e), and (g) are revised to read as follows:

§ 19.25 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 12 CFR part 4 implementing the Freedom of Information Act (5 U.S.C. 552). 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 to the administrative law judge 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.

* * * * *

10. In § 19.33, paragraph (a) is revised to read as follows:

§ 19.33 Public hearings.

(a) *General rule.* All hearings shall be open to the public, unless the Comptroller, in the Comptroller's 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 Comptroller 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 Comptroller. The form of, and procedure for, these requests and replies are governed by § 19.23. 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 § 19.34, paragraphs (a) and (b)(1) are revised to read as follows:

§ 19.34 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 § 19.35, 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:

§ 19.35 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 § 19.37, the section heading and paragraph (a)(1) are revised to read as follows:

§ 19.37 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 or within such longer period as may be ordered by the administrative law judge.

* * * * *

14. Section 19.38 is revised to read as follows:

§ 19.38 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 § 19.37(b), the administrative law judge shall file with and certify to the Comptroller, 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 Comptroller for final determination the record of the proceeding, the administrative law judge shall furnish to the Comptroller 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.

Subpart B—[Amended]

15. 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]

16. 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, as 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 in response to a 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, as 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, the 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, the Deputy Comptroller for Multinational Banking, or the Deputy Comptroller or Director for Special Supervision, as 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 presiding 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.

* * * * *

17. In § 19.113, paragraphs (a) and (b) are revised, paragraph (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 of the conclusion of the hearing or, when the petitioner has waived an oral hearing, within 20 days of 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 of the conclusion of the hearing or, when the petitioner has waived an oral hearing, within 60 days from the date fixed for the hearing, the Comptroller must notify the petitioner by registered mail 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]

18. 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''.

19. 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 shall issue, 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 order 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]

20. Section 19.162 is removed.

Subpart I—[Amended]

21. 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 a copy of the transcript available to each party upon payment by that party of the cost of the copy.

* * * * *

22. In § 19.171, paragraph (b) is revised to read as follows:

§ 19.171 Deposition subpoenas.

* * * * *

(b) *Service*—(1) *Methods of service.* The party requesting the subpoena must serve it on the person named therein, or on that person's counsel, by any of the methods identified in § 19.11(d).

(2) *Proof of service.* The party serving the subpoena must file proof of service with the administrative law judge.

* * * * *

Subpart J—[Amended]

23. Section 19.184 is revised to read as follows:

§ 19.184 Service of subpoena and payment of witness expenses.

(a) *Methods of service.* Service of a subpoena may be made by any of the methods identified in § 19.11(d).

(b) *Expenses.* 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 2, 1996.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 96–10331 Filed 5–3–96; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL RESERVE SYSTEM

12 CFR Part 263

[Docket No. R–0878]

Uniform Rules of Practice and Procedure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board), as a result of an interagency review conducted by the Board, the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA), is amending its implementation of the Uniform Rules of Practice and Procedure for Administrative Hearings (Uniform Rules). The Board's review of the Uniform Rules was conducted in accordance with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994.

The final rule is intended to clarify certain provisions and to increase the efficiency and fairness of administrative hearings.

EFFECTIVE DATE: June 5, 1996.

FOR FURTHER INFORMATION CONTACT: Katherine H. Wheatley, Assistant General Counsel, Legal Division (202 452–3779), Douglas B. Jordan, Senior Attorney, Legal Division, (202 452–3787), or Ann Marie Kohlligian, Senior Counsel, Division of Banking Supervision and Regulation, (202/452–3528).

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 Board, OCC, 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

[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 their experience in using the rules since then, the agencies have identified sections of the Uniform Rules that should be modified. Accordingly, the agencies proposed amendments to the Uniform Rules on June 23, 1995 (60 FR 32882).

The Board received two comments on the proposal. Both commenters expressed general approval of the proposal, and one suggested specific improvements. The Board has also reviewed the comments received by the other agencies.

The final rule implements the proposal with minor changes. The following section-by-section analysis summarizes the final rule and highlights the changes from the proposal that the Board has made after considering the commenters' suggestions.

The OTS, FDIC, OCC, and NCUA are publishing separate final rules that are substantively identical to the Board's final rule. The OTS, FDIC, and OCC rules appear elsewhere in this Federal Register. The process of amendment of the Uniform Rules and their adoption in identical form by the agencies also meets the requirements of section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994.

B. Section-by-Section Summary and Discussion of Amendments to the Uniform Rules

Section 263.1 Scope

The proposal added two statutory provisions to the list of civil money penalty provisions to which the Uniform Rules apply. The 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, amended 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, amended 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 against a regulated lending institution if the institution has a pattern of committing violations of the FDPA or the notice requirements of the National Flood Insurance Act of 1968 (NFIA). Under the FDPA, the term ''Federal entity for lending regulation'' includes the agencies and the Farm Credit Administration.

CDRI section 525 also gave the agencies authority to require a regulated lending institution to take remedial actions that are necessary to ensure that the institution complies with the requirements of the national flood insurance program if: (1) The institution has engaged in a pattern and practice of noncompliance with regulations issued pursuant to the FDPA and NFIA; and (2) has not demonstrated measurable improvement in compliance despite the assessment of civil money penalties. The final rule adds a new paragraph to the scope section that reflects this additional authority.

The Board received no comments on this section, which is adopted as proposed.

Section 263.6 Appearance and Practice in Adjudicatory Proceedings

The proposal permitted the Administrative Law Judge (ALJ) to require counsel who withdraws after filing a notice of appearance on behalf of a party to accept service of papers for that party until either: (1) A new counsel has filed a notice of appearance; or (2) the party indicates that he or she will proceed on a *pro se* basis.

The Board received one comment on this section. The commenter suggested that the proposal does not adequately address certain situations: for example, when counsel withdraws because of a lack of payment of legal fees that is caused by an agency asset freeze, or withdraws because the client discharged him or her. The commenter's implication is that it is unfair to require counsel to continue to accept service in these situations. The commenter expressed concern that the administrative proceeding may become involved in a dispute between the client and counsel when the ALJ requires counsel to continue to accept service after a client discharges counsel. The commenter suggested that the rule should require that service be given to both the unreplaced counsel and the party.

The proposal was intended to ensure that a lawyer is always available to receive service in order to prevent a party from halting the administrative proceedings simply by evading service. The regulatory text is clear, however, that the ALJ has the discretion whether to require former counsel to continue to accept service. Fairness to counsel is among the factors that ALJ would consider in exercising this discretion, and the Board therefore believes that the provision as proposed is sufficiently flexible to accommodate the concerns raised by the commenter.

The final rule changes the proposal's reference from ''service of process'' to ''service'' to clarify that this section applies to all papers that the party is entitled to receive. This section is otherwise adopted as proposed.

Section 263.8 Conflicts of Interest

The proposal sought to improve, in two ways, the provisions governing conflicts of interest that arise when counsel represents multiple persons connected with a proceeding.

First, the proposal sought to protect the interests of individuals and financial institutions by expanding the circumstances under which counsel must certify that he or she has obtained a waiver from non-parties of any potential conflict of interest. The former rule required counsel to obtain waivers only from non-party institutions ''to which notice of the proceedings must be given.'' The proposal required counsel to obtain waivers from all parties and non-parties that counsel represents on a matter relevant to an issue in the proceeding. It thus ensured that all appropriate party and non-party individuals and institutions are informed of potential conflicts.

Second, the proposal simplified this provision by eliminating the requirement that counsel certify that each client has asserted that there are no conflicts of interest. The Board believes that the former provision was superfluous because the responsibility for identifying potential conflicts resides with counsel.

The Board received one comment on this section. The commenter noted that the proposal may inhibit multiple representation that otherwise complies with applicable ethics rules. The commenter suggested that the proposal could inappropriately tilt the proceeding in favor of the agencies.

The provision does not limit the right of any party to representation by counsel of the party's choice. Rather, it ensures that all interested persons are informed of potential conflicts so that they may avoid the conflict if they choose. State rules of professional responsibility that impose more stringent ethical standards are unaffected by this requirement.

In addition, the Board is unpersuaded by the argument that the provision grants the agencies any significant advantage in a proceeding. Persons and institutions may be well and vigorously

on the following dates: OCC on August 9, 1991 (56 FR 38024); Board 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).

represented even if they are not all represented by the same counsel.

Therefore, the Board adopts this section as proposed.

Section 263.11 Service of Papers

The proposal changed this section by permitting parties, the Board, and ALJs to serve a subpoena on a party by delivering it to a person of suitable age and discretion at a party's place of work.

The Board received one comment on this section. The commenter supported the intent of the proposal, but asserted that permitting service at a person's place of work was too broad to be effective, particularly where a bank has numerous branches.

The Board interpreted the phrase ''person's place of work'' as used in the proposal to mean the physical location at which an individual works and not as any office of the corporation or association at which a person works. To avoid confusion, the Board has added specific reference to physical location in the regulatory text. In addition, the final rule states expressly that only an individual, not a corporation or association, may be served at a residence or place of work.

The comment points out, however, that the former Uniform Rules did not permit certain methods of service that are useful for serving a corporation or other association and that are permitted under the Federal Rules of Civil Procedure. The final rule, therefore, permits service on a party corporation or other association by delivery of a copy of a notice to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The final rule also provides that, if the agent is one authorized by statute to receive service and the statute so requires, the serving party must also mail a copy to the party. The final rule also restructures this provision for clarity.

Section 263.12 Construction of Time Limits

The proposal clarified that the additional time allotted for responding to papers served by mail, delivery service, or electronic media transmission under § 263.12(c) is not included in determining whether an act is required to be performed within ten days. The proposal also clarified that additional time allotted for responding to papers served by mail, delivery, or electronic media transmission is counted by calendar days and, therefore, a party must count Saturdays, Sundays, and holidays when calculating a time deadline.

The Board received no comments on this section, which is adopted as proposed.

Section 263.20 Amended Pleadings

The proposal changed this section to permit a party to amend its pleadings without leave of the ALJ and to permit the ALJ to admit evidence over the objection that the evidence does not fall directly within the scope of the issues raised by a notice or answer.

The Board received one comment on this section. The commenter asserted that the change could unduly prejudice a party if a notice were amended to add or delete allegations immediately prior to the hearing. The commenter expressed concern that the amendment would give a party insufficient time to seek additional discovery or file for summary judgment.

The regulatory text gives the ALJ discretion to revise the hearing schedule to ensure that no prejudice results from last minute amendments to a notice. The Board believes this approach is adequate to avoid prejudice to a party and, therefore, adopts this section as proposed.

Section 263.24 Scope of Document Discovery

The former Uniform Rules were silent on the use of interrogatories. The proposal expressly prohibited parties from using interrogatories on grounds that other discovery tools are more efficient and less burdensome, and therefore more appropriate to administrative adjudications.

The proposal also sought to focus document discovery requests so that they are not unreasonable, oppressive, excessive in scope, or unduly burdensome to any of the parties.

Accordingly, the proposal preserved the former rule's limitation by permitting discovery only of documents that have material relevance. However, the proposal specifically provided that a request should be considered unreasonable, oppressive, excessive in scope, or unduly burdensome if, among other things: (1) it fails to include justifiable limitations on the time period covered and the geographic locations to be searched; (2) the time provided to respond in the request is inadequate; or (3) 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 § 263.25.

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 Board received no significant comments on this section and, therefore, adopts this section as proposed.

Section 263.25 Request for Document Discovery From Parties

The Board proposed several changes to § 263.25. First, the proposal sought to reduce unnecessary burden by permitting a party to: (1) respond to document discovery either by producing documents as they are kept in the ordinary course of business or by organizing them to correspond to the categories in a document request; and (2) identify similar documents by category when they are voluminous and are protected by the deliberative process, attorney-client, or attorney-work-product privilege.

The proposal also amended section 263.25 to permit a party to require payment in advance for the costs of copying and shipping requested documents, and clarified that, if a party has stated its intention to file a timely motion for interlocutory review, the ALJ may not release, or order a party to produce, documents withheld on grounds of privilege until the motion for interlocutory review has been decided.

The Board received two comments on this section. One commenter sought guidance on when, how, and to whom a party must express an ''intention'' to file a timely motion for interlocutory review. Because it is the ALJ who may not release or order a party to produce documents, it was implicit in the proposed regulatory text that a party must make the intention to seek interlocutory review known to the ALJ. For clarity's sake, the final rule adds language to this effect.

Another commenter suggested that a request for interlocutory review should automatically stay the proceeding. Under § 263.28(d) of the Uniform Rules, a party may request that a proceeding be stayed during the pendency of an interlocutory review, and the ALJ has the discretion to decide whether a stay is appropriate. The Board believes that this procedure adequately protects the parties. For this reason and to avoid unnecessary delays in the administrative proceedings, the Board declines to provide for an automatic stay whenever a party requests interlocutory review.

One commenter asserted that permitting the Board to require payment in advance for document copying and shipping costs would give the Board an

advantage over other creditors if the party is bankrupt following the administrative hearing. The Board finds that this situation is rare and therefore does not outweigh the Board's need to ensure that it receives payment. Moreover, the provision does not preclude other creditors from requiring prepayment for products or services.

The Board adopts this section as proposed.

Section 263.27 Deposition of Witness Unavailable for Hearing

The proposal clarified that a party may serve a deposition subpoena on a witness who is unavailable by serving the subpoena on the witness's authorized representative. The Board does not include this proposed change because, in § 263.11(d), the final rule expressly permits a party to serve a subpoena by delivering the subpoena to an agent, which includes delivery to an authorized representative. Therefore, the proposed change to § 263.27 would be redundant.

The Board received no comments on this section, and makes no change to it.

Section 263.33 Public Hearings

The proposal changed this section to specify that a party must file a motion for a private hearing with the Board and not the ALJ, but must serve the ALJ with a copy of the motion.

The Board received no comments on this section, which is adopted as proposed.

Section 263.34 Hearing Subpoenas

The former Uniform Rules did not specifically require that a party inform all other parties when a subpoena to a non-party is issued. The proposal required 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. Under the proposal, any party may move to quash any hearing subpoena and must serve the motion on each other party.

The Board received no comments on this section, which is adopted as proposed.

Section 263.35 Conduct of Hearings

The proposal limited the number of counsel permitted to examine a witness and clarified that hearing transcripts may be obtained only from the court reporter. The former Uniform Rules were silent on these issues.

The Board received no comments on this section, which is adopted as proposed.

Section 263.37 Post-Hearing Filings

The proposal changed the title of this section from ''Proposed findings and conclusions'' to ''Post-hearing filings'' to describe more accurately the content of the section.

The proposal also moved, from § 263.35(b) to § 263.37(a), the provision that requires the ALJ to serve each party with notice of the filing of the certified transcript of the hearing (including hearing exhibits). The proposal added a requirement that the ALJ must use the same method of service for this notice.

Finally, the proposal clarified 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.

The Board received no comments on this section, which is adopted with a minor technical change.

Section 263.38 Recommended Decision and Filing of Record

Under the former Uniform Rules, the ALJ was not required to file an index of the record when he filed the record with the Board. The proposal added this requirement and reorganized this section to improve its clarity.

The Board received no comments on this section, which is adopted as proposed.

C. Regulatory Flexibility Act

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

This final rule only imposes procedural requirements in administrative adjudications. It contains no substantive requirements. It improves the Uniform Rules of Practice and Procedure and facilitates the orderly determination of administrative proceedings. The changes in this final rule are primarily clarifications and impose no significant additional burdens on regulated institutions, parties to administrative actions, or counsel.

List of Subjects in 12 CFR Part 263

Administrative practice and procedure, Claims, Crime, Equal access to justice, Federal Reserve System, Lawyers, Penalties.

For the reasons set out in the preamble, 12 CFR Part 263 is 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; and 42 U.S.C. 4012a.

2. In § 263.1, paragraph (e)(9) is amended by removing ''and'' after the semicolon, new paragraphs (e)(11) and (e)(12) are added, paragraph (f) is redesignated as paragraph (g) and revised, and new paragraph (f) is added to read as follows:

§ 263.1 Scope.

* * * * *

(e) * * *

(11) Any provision of law referenced in section 102(f) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(f)) or any order or regulation issued thereunder; and

(12) Any provision of law referenced in 31 U.S.C. 5321 or any order or regulation issued thereunder;

(f) Remedial action under section 102(g) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(g)); and

(g) This subpart also applies to all other adjudications required by statute to be determined on the record after opportunity for an agency hearing, unless otherwise specifically provided for in the Local Rules.

3. In § 263.6, paragraph (a)(3) is revised to read as follows:

§ 263.6 Appearance and practice in adjudicatory proceedings.

(a) * * *

(3) *Notice of appearance.* Any individual acting as counsel on behalf of a party, including the Board, 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 required by the administrative law judge, continue to accept service 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.

* * * * *

4. In § 263.8, paragraph (b) is revised to read as follows:

§ 263.8 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 § 263.6(a):

(1) That the counsel has personally and fully discussed the possibility of conflicts of interest with each such party and non-party; and

(2) That each such party and 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.

5. In § 263.11, paragraphs (c)(2) and (d) are revised to read as follows:

§ 263.11 Service of papers.

* * * * *

(c) * * *

(2) If a party has not appeared in the proceeding in accordance with § 263.6, the Board or the administrative law judge shall make service by any of the following methods:

(i) By personal service;

(ii) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;

(iii) If the person to be served is a corporation or other association, by delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party;

(iv) By registered or certified mail addressed to the person's last known address; or

(v) By any other method reasonably calculated to give actual notice.

(d) *Subpoenas.* Service of a subpoena may be made:

(1) By personal service;

(2) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;

(3) By delivery to an agent, which, in the case of a corporation or other association, is delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party;

(4) By registered or certified mail addressed to the person's last known address; or

(5) By any other method as is reasonably calculated to give actual notice.

* * * * *

6. In § 263.12, paragraphs (a), (c)(1), (c)(2), and (c)(3) are revised to read as follows:

§ 263.12 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 in paragraph (c) of this section, 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 Board or the administrative law judge in the case of filing, or by agreement among the parties in the case of service.

7. Section 263.20 is revised to read as follows:

§ 263.20 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 Board 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.

8. In § 263.24, paragraphs (a) and (b) are revised to read as follows:

§ 263.24 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 § 263.53 of subpart B 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 § 263.25.

* * * * *

9. In § 263.25, paragraphs (a), (b), (e), and (g) are revised to read as follows:

§ 263.25 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 12 CFR Part 261 implementing the Freedom of Information Act (5 U.S.C. 552). 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 to the administrative law judge 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.

* * * * *

10. In § 263.33, paragraph (a) is revised to read as follows:

§ 263.33 Public hearings.

(a) *General rule.* All hearings shall be open to the public, unless the Board, in the Board's 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 Board 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 Board. The form of, and procedure for, these requests and replies are governed by § 263.23. 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 § 263.34, paragraphs (a) and (b)(1) are revised to read as follows:

§ 263.34 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 § 263.35, 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:

§ 263.35 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 § 263.37, the section heading and paragraph (a)(1) are revised to read as follows:

§ 263.37 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 or within such longer period as may be ordered by the administrative law judge.

* * * * *

14. Section 263.38 is revised to read as follows:

§ 263.38 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 § 263.37(b), the administrative law judge shall file with and certify to the Board, 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 Board for final determination the record of the proceeding, the administrative law judge shall furnish to the Board 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.

By order of the Board of Governors of the Federal Reserve System, April 26, 1996.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 96–10890 Filed 5–3–96; 8:45 a.m.]

BILLING CODE 6210–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

RIN 3064–AB49

Uniform Rules of Practice and Procedure

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is amending its regulatory provisions implementing the Uniform Rules of Practice and Procedure (Uniform Rules). The final rule is intended to clarify certain provisions and to increase the efficiency and fairness of administrative hearings.

EFFECTIVE DATE: June 5, 1996.

FOR FURTHER INFORMATION CONTACT: Andrea Winkler, Counsel, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429; (202) 736–0762.

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 FDIC, Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Office of Thrift Supervision (OTS), and National Credit Union Administration (NCUA)(collectively 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, the agencies have identified sections of the Uniform Rules that should be modified. Accordingly, the agencies proposed amendments to the Uniform Rules on June 23, 1995 (60 FR 32882).

The FDIC received one comment on the proposal. The commenter generally supported the proposal, but suggested improvements. The FDIC also considered comments received by the other agencies.

The final rule implements the proposal with minor changes. The following section-by-section analysis summarizes the final rule and highlights the changes from the proposal that the FDIC has made after considering the commenters' suggestions.

The OTS, OCC, Board and NCUA are publishing separate final rules that are substantively identical to the FDIC's final rule. The OTS, OCC, and Board rules appear elsewhere in this Federal Register.

B. Section-by-Section Summary and Discussion of Amendments to the Uniform Rules

Section 308.1 Scope

The proposal added two statutory provisions to the list of civil money penalty provisions to which the Uniform Rules apply. The 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, amended 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, amended section 102 of 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 against a regulated lending institution if the institution has a pattern or practice of committing violations of the FDPA or the notice requirements of the National Flood Insurance Act of 1968 (NFIA) (42 U.S.C. 4104a). Under the FDPA, the term ''Federal entity for lending

[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 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).

regulation'' includes the agencies and the Farm Credit Administration.

Section 525 of CDRI also gave the agencies authority to require a regulated lending institution to take remedial actions that are necessary to ensure that the institution complies with the requirements of the national flood insurance program if: (1) The institution has engaged in a pattern or practice of noncompliance with regulations issued pursuant to the FDPA and NFIA; and (2) has not demonstrated measurable improvement in compliance despite the assessment of civil money penalties. The final rule adds a new paragraph to the scope section that reflects this additional authority.

The FDIC received no comments on this section, which is adopted as proposed with the addition of the aforementioned paragraph pertaining to remedial action.

Section 308.6 Appearance and Practice in Adjudicatory Proceedings

The proposal permitted the administrative law judge (ALJ) to require counsel who withdraws from representing a party to accept service of papers for that party until either: (1) A new counsel has filed a notice of appearance; or (2) the party indicates that he or she will proceed on a *pro se* basis.

The FDIC received one comment on this section. The commenter suggested that the proposal does not adequately address certain situations: for example, when counsel withdraws because of lack of payment of legal fees that is caused by an agency asset freeze, or withdraws because the client discharged him or her. The commenter's implication is that it is unfair to require counsel to continue to accept service in these situations. Moreover, the commenter expressed concern that the administrative proceeding may become involved in a dispute between the client and counsel when the ALJ requires counsel to continue to accept service after a client discharges counsel. The commenter suggested that the rule should require that service be given to both the unreplaced counsel and the party.

The proposal was intended to ensure that a lawyer is always available to receive service in order to prevent a party from halting the administrative proceedings simply by evading service. The regulatory text is clear, however, that the ALJ has discretion whether to require former counsel to continue to accept service. Fairness to counsel is among the factors the ALJ would consider in exercising this discretion, and the FDIC therefore believes that the provision as proposed is sufficiently flexible to accommodate the concerns raised by the commenter.

The final rule changes the proposal's reference from ''service of process'' to ''service'' to clarify that this section applies to all papers that the party is entitled to receive. This section is otherwise adopted as proposed.

Section 308.8 Conflicts of Interest

The proposal sought to improve in two ways the provisions governing conflicts of interest that arise when counsel represents multiple persons connected with a proceeding.

First, the proposal sought to protect the interests of individuals and financial institutions by expanding the circumstances under which counsel must certify that he or she has obtained a waiver from non-parties of any potential conflict of interest. The former rule required counsel to obtain waivers only from non-party institutions ''to which notice of the proceedings must be given''. The proposal required counsel to obtain waivers from all parties and non-parties that counsel represents on a matter relevant to an issue in the proceeding. It thus ensured that all appropriate party and non-party individuals and institutions are informed of potential conflicts.

Second, the proposal simplified this provision by eliminating the requirement for counsel to certify that each client has asserted that there are no conflicts of interest. The FDIC believes that the former provision was superfluous because the responsibility for identifying potential conflicts resides with counsel.

The FDIC received one comment on this section. The commenter noted that the proposal may inhibit multiple representation that otherwise complies with applicable ethics rules. The commenter suggested that the proposal could inappropriately tilt the proceeding in favor of the agencies.

The provision does not limit the right of any party to representation by the counsel of the party's choice. Rather, it ensures that all interested persons are informed of potential conflicts so that they may avoid the conflict if they choose. In the FDIC's view, it is reasonable to establish a baseline standard requiring the affirmative waiver of conflicts by all affected persons or entities in order to ensure the integrity of the administrative adjudication process. State rules of professional responsibility that impose more stringent ethical standards are unaffected by this requirement.

In addition, the FDIC is unpersuaded by the argument that the conflicts provision grants the agencies significant advantage in a proceeding. Persons and entities may be well and vigorously represented even if they are not all represented by the same counsel.

Therefore, the FDIC adopts this section as proposed.

Section 308.11 Service of Papers

The proposal changed this section by permitting parties, the Board of Directors, and ALJs to serve a subpoena on a party by delivering it to a person of suitable age and discretion at a party's place of work. One comment was received by the agencies on this section. The commenter supported the intent of the proposal, but asserted that permitting service at a person's place of work was too broad to be effective, particularly where a bank has numerous branches.

The FDIC interpreted the phrase ''person's place of work'' as used in the proposal to mean the physical location at which an individual works and not as any office of the corporation or association that employs the person. To avoid confusion, the FDIC has added specific reference to physical location to the regulatory text. In addition, the final rule states expressly that only an individual, not a corporation or association, may be served at a residence or place of work.

The same comment points out, however, that the former Uniform Rules did not permit certain methods of service that are useful for serving a corporation or other association. The final rule, therefore, permits service on a party, corporation or other association by delivery of a copy of a notice to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The final rule also provides that, if the agent is one authorized by statute to receive service and the statute so requires, the serving party must also mail a copy to the party. The final rule also restructures this provision for clarity.

Section 308.12 Construction of Time Limits

The proposal clarified that the additional time allotted for responding to papers served by mail, delivery service, or electronic media transmission under § 308.12(c) is not included in determining whether an act is required to be performed within ten days. The proposal also clarified that additional time allotted for responding to papers served by mail, delivery, or electronic media transmission is counted by calendar days and, therefore, a party must count Saturdays, Sundays,

and holidays when calculating a time deadline.

The FDIC received no comments on this section, which is adopted as proposed.

Section 308.20 Amended Pleadings

The proposal changed this section to permit a party to amend its pleadings without leave of the ALJ and to permit the ALJ to admit evidence over the objection that the evidence does not fall directly within the scope of the issues raised by a notice or answer.

The FDIC received one comment on this section. The commenter asserted that the change could unduly prejudice a party if a notice were amended to add or delete allegations immediately prior to the hearing. The commenter expressed concern that the amendment would give a party insufficient time to seek additional discovery or file for summary judgment.

The regulatory text gives the ALJ discretion to revise the hearing schedule to ensure that no prejudice results from last minute amendments to a notice. The FDIC believes this approach is adequate to avoid prejudice to a party and, therefore, adopts this section as proposed.

Section 308.24 Scope of Document Discovery

The former Uniform Rules were silent on the use of interrogatories. The proposal expressly prohibited parties from using interrogatories on the grounds that other discovery tools are more efficient and less burdensome and therefore more appropriate to administrative adjudications.

The proposal also sought to focus document discovery requests so that they are not unreasonable, oppressive, excessive in scope, or unduly burdensome to any of the parties.

Accordingly, the proposal preserved the former rule's limitation on document discovery by permitting discovery only of documents that have material relevance. However, the proposal specifically provided that a request should be considered unreasonable, oppressive, excessive in scope, or unduly burdensome if, among other things: (1) it fails to include justifiable limitations on the time period covered and the geographic locations to be searched; (2) the time provided to respond in the request is inadequate; or (3) 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 § 308.25.

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 agencies received no significant comments on this section and, therefore, the FDIC adopts it as proposed.

Section 308.25 Request for Document Discovery From Parties

The FDIC proposed several changes to § 308.25. First, the proposal sought to reduce unnecessary burden by permitting a party to: (1) respond to document discovery either by producing documents as they are kept in the ordinary course of business or by organizing them to correspond to the categories in a document request; and (2) identify similar documents by category when they are voluminous and are protected by the deliberative process, attorney-client, or attorney-work-product privilege.

The proposal also amended section 308.25 to permit a party to require payment in advance for the costs of copying and shipping requested documents and clarified that, if a party has stated its intention to file a timely motion for interlocutory review, the ALJ may not release, or order a party to produce, documents withheld on grounds of privilege until the motion for interlocutory review has been decided.

The FDIC received one comment on this section, and one other comment was received by the agencies. One commenter sought guidance on when, how, and to whom a party must express an ''intention'' to file a timely motion for interlocutory review.

Because it is the ALJ who may not release or order a party to produce documents, it was implicit in the proposed regulatory text that a party must make the intention to seek interlocutory review known to the ALJ. For clarity's sake, the final rule adds language to this effect.

Another commenter suggested that a request for interlocutory review should stay the proceeding.

Under § 308.28(d) of the Uniform Rules, a party may request that a proceeding be stayed during the pendency of an interlocutory review and the ALJ has the discretion to decide whether a stay is appropriate. The FDIC believes that this procedure adequately protects the parties. For this reason and to avoid adding unnecessary delays in the administrative proceedings, the FDIC declines to provide for an automatic stay whenever a party requests interlocutory review.

One commenter asserted that permitting the FDIC to require payment in advance for document copying and shipping costs would give the FDIC an advantage over other creditors if the party is bankrupt following the administrative hearing. The FDIC finds that this situation is rare and therefore does not outweigh the FDIC's need to ensure that it receives payment. Moreover, the provision does not preclude other creditors from requiring prepayment for products or services. Accordingly, the FDIC adopts this section as proposed.

Section 308.27 Deposition of Witness Unavailable for Hearing

The proposal clarified that a party may serve a deposition subpoena on a witness who is unavailable by serving the subpoena on the witness's authorized representative. The FDIC does not include this proposed change because in § 308.11(d), the final rule expressly permits a party to serve a subpoena by delivering the subpoena to an agent, which includes delivery to an authorized representative. Therefore, the proposed change to § 308.27 would be redundant.

The FDIC received no comments on this section, and makes no change to it.

Section 308.33 Public Hearings

The proposal changed this section to specify that a party must file a motion for a private hearing with the Executive Secretary and not the ALJ but must serve the ALJ with a copy of the motion.

The FDIC received no comments on this section, which is adopted as proposed.

Section 308.34 Hearing Subpoenas

The former Uniform Rules did not specifically require that a party inform all other parties when a subpoena to a non-party is issued. The proposal required 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. Under the proposal, any party may move to quash any hearing subpoena and must serve the motion on each other party.

The FDIC received no comments on this section, which is adopted as proposed.

Section 308.35 Conduct of Hearings

The proposal limited the number of counsel permitted to examine a witness and clarified that hearing transcripts may be obtained only from the court reporter. The former Uniform Rules were silent on these issues.

The FDIC received no comments on this section, which is adopted as proposed.

Section 308.37 Post-Hearing Filings

The proposal changed the title of this section from ''Proposed findings and conclusions'' to ''Post-hearing filings'' to describe more accurately the content of the section.

The proposal also moved, from § 308.35(b) to § 308.37(a), the provision that requires the ALJ to serve each party with notice of the filing of the certified transcript of the hearing (including hearing exhibits). The proposal added a requirement that the ALJ must use the same method of service for this notice.

Finally, the proposal clarified 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.

The FDIC received no comments on this section, which is adopted as proposed.

Section 308.38 Recommended Decision and Filing of Record

Under the former Uniform Rules, the ALJ was not required to file an index of the record when he filed the record with the Board of Directors. The proposal added this requirement and reorganized this section to improve its clarity.

The FDIC received no comments on this section, which is adopted as proposed.

C. Regulatory Flexibility Act

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

This final rule only imposes procedural requirements in administrative adjudications. It contains no substantive requirements. It improves the Uniform Rules of Practice and Procedure and facilitates the orderly determination of administrative proceedings. The changes in this final rule are primarily clarifications and impose no significant additional burdens on regulated institutions, parties to administrative actions, or counsel.

D. Effective Date

Section 302(b) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, September 29, 1994) provides that new regulations and amendments to regulations prescribed by the federal banking agencies shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulation is published in final form, unless the agency determines for good cause that the regulation should become effective at an earlier date or the regulation is required to become effective at some other date determined by law. The Administrative Procedure Act (5 U.S.C. 551 *et seq.*) provides that regulations shall become effective thirty days after their publication in the Federal Register. 5 U.S.C. 553. Thus, this amendment to Part 308 of the FDIC's regulations shall become effective on June 5, 1996.

List of Subjects in 12 CFR Part 308

Administrative practice and procedure, Bank deposit insurance, Claims, Crime, Equal access to justice, Investigations, Lawyers, Penalties.

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 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. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1817, 1818, 1820, 1831o, 1972, 3102, 3108(a), 3909, 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, 5321; 42 U.S.C. 4012a.

Subpart A—[Amended]

2. In § 308.1, paragraph (e)(8) is amended by removing ''and'' after the semicolon, paragraphs (e)(10) and (e)(11) are added, paragraph (f) is redesignated as paragraph (g) and revised, and new paragraph (f) is added to read as follows:

§ 308.1 Scope.

* * * * *

(e) * * *

(10) Any provision of law referenced in section 102(f) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(f)) or any order or regulation issued thereunder; and

(11) Any provision of law referenced in 31 U.S.C. 5321 or any order or regulation issued thereunder;

(f) Remedial action under section 102(g) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(g)); and

(g) This subpart also applies to all other adjudications required by statute to be determined on the record after opportunity for an agency hearing, unless otherwise specifically provided for in the Local Rules.

3. In § 308.6, paragraph (a)(3) is revised to read as follows:

§ 308.6 Appearance and practice in adjudicatory proceedings.

(a) * * *

(3) *Notice of appearance.* Any individual acting as counsel on behalf of a party, including the FDIC, 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 required by the administrative law judge, continue to accept service 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.

* * * * *

4. In § 308.8, paragraph (b) is revised to read as follows:

§ 308.8 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 § 308.6(a):

(1) That the counsel has personally and fully discussed the possibility of conflicts of interest with each such party and non-party; and

(2) That each such party and 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.

5. In § 308.11, paragraphs (c) (2) and (d) are revised to read as follows:

§ 308.11 Service of papers.

* * * * *

(c) * * *

(2) If a party has not appeared in the proceeding in accordance with § 308.6, the Board of Directors or the administrative law judge shall make service by any of the following methods:

(i) By personal service;

(ii) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;

(iii) If the person to be served is a corporation or other association, by delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party;

(iv) By registered or certified mail addressed to the party's last known address; or

(v) By any other method reasonably calculated to give actual notice.

(d) *Subpoenas.* Service of a subpoena may be made:

(1) By personal service;

(2) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;

(3) By delivery to an agent which, in the case of a corporation or other association, is delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party;

(4) By registered or certified mail addressed to the person's last known address; or

(5) In such other manner as is reasonably calculated to give actual notice.

* * * * *

6. In § 308.12, paragraphs (a), (c)(1), (c)(2), and (c)(3) are revised to read as follows:

§ 308.12 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 in paragraph (c) of this section, 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 Board of Directors or the administrative law judge in the case of filing, or by agreement among the parties in the case of service.

7. Section 308.20 is revised to read as follows:

§ 308.20 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 Board of Directors 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.

8. In § 308.24, paragraphs (a) and (b) are revised to read as follows:

§ 308.24 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 I 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 § 308.25.

* * * * *

9. In § 308.25, paragraphs (a), (b), (e), and (g) are revised to read as follows:

§ 308.25 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 12 CFR part 310 implementing the Freedom of Information Act (5 U.S.C. 552). 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 to the administrative law judge 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.

* * * * *

10. In § 308.33, paragraph (a) is revised to read as follows:

§ 308.33 Public hearings.

(a) *General rule.* All hearings shall be open to the public, unless the FDIC, in 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 Executive Secretary 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 Executive Secretary. The form of, and procedure for, these requests and replies are governed by § 308.23. 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 § 308.34, paragraphs (a) and (b)(1) are revised to read as follows:

§ 308.34 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 § 308.35, 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:

§ 308.35 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 § 308.37, the section heading and paragraph (a)(1) are revised to read as follows:

§ 308.37 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 or within such longer period as

may be ordered by the administrative law judge.

* * * * *

14. Section 308.38 is revised to read as follows:

§ 308.38 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 § 308.37(b), the administrative law judge shall file with and certify to the Executive Secretary, 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 Executive Secretary for final determination the record of the proceeding, the administrative law judge shall furnish to the Executive Secretary 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.

By order of the Board of Directors.

Dated at Washington, D.C. this 3rd day of April 1996.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 96–10471 Filed 5–3–96; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 509

[No. 96–30]

RIN 1550–AA79

Uniform Rules of Practice and Procedure

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its Rules of Practice and Procedure in Adjudicatory Proceedings. The final rule is intended to clarify certain provisions and to increase the efficiency and fairness of administrative hearings.

EFFECTIVE DATE: June 5, 1996.

FOR FURTHER INFORMATION CONTACT: Karen A. Osterloh, Counsel (Banking and Finance), Regulations and Legislation Division, Chief Counsel's Office, (202) 906–6639, or Eliot Goldstein, Counsel, Division of Enforcement, Chief Counsel's Office, (202) 906–7162, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

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 OTS, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Administration (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 in using the rules since then, the agencies have identified sections of the Uniform Rules that should be modified. Accordingly, the agencies proposed amendments to the Uniform Rules on June 23, 1995 (60 FR 32882). These changes affect OTS Uniform Rules at 12 CFR Part 509 (Subpart A). The OTS also proposed amendments to its agency-specific procedural rules at 12 CFR Part 509 (Subpart B) (Local Rules).

The OTS received one comment which expressed general approval of the proposal and suggested specific improvements. The OTS has also considered comments submitted to the other agencies on the proposed rule.

The final rule implements the proposal with minor changes. The following section-by-section analysis summarizes the final rule and highlights the changes that the OTS has made after considering the commenters' suggestions.

The OCC, FDIC, Board and NCUA are publishing separate final rules that are substantively identical to the OTS's final rule. The OCC, FDIC, and Board rules appear elsewhere in this Federal Register.

B. Section-by-Section Summary and Discussion of Amendments to the Uniform Rules

Section 509.1 Scope

The proposal added two statutory provisions to the list of civil money penalty provisions to which the Uniform Rules apply. The 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, amended 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 provision, CDRI section 525, amended section 102 of 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 against a regulated lending institution if the institution has a pattern or practice of committing violations of the FDPA or the notice requirements of the National Flood Insurance Act of 1968 (NFIA) (42 U.S.C. 4104a). Under the FDPA, the term ''Federal entity for lending regulation'' includes the agencies and the Farm Credit Administration.

CDRI § 525 also gave the agencies authority to require a regulated lending institution to take remedial actions that are necessary to ensure that the institution complies with the requirements of the national flood insurance program if: (1) the institution has engaged in a pattern and practice of noncompliance with regulations issued pursuant to the FDPA; and (2) has not

[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 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).

demonstrated measurable improvement in compliance despite the assessment of civil money penalties. The final rule adds a new paragraph to the scope section that reflects this additional authority.

The OTS received no comments on this section, which is adopted as proposed.

Section 509.6 Appearance and Practice in Adjudicatory Proceedings

The proposal permitted the administrative law judge (ALJ) to require counsel who withdraws from representing a party to accept service of papers for that party until either: (1) a new counsel has filed a notice of appearance; or (2) the party indicates that he or she will proceed on a *pro se* basis.

One commenter suggested that the proposal does not adequately address certain situations: for example, when counsel withdraws because of lack of payment of legal fees or withdraws because the client discharged him or her. The commenter's implication is that it is unfair to require counsel to continue to accept service in these situations. Moreover, the commenter expressed concern that the administrative proceeding may become involved in a dispute between the client and counsel when the ALJ requires counsel to continue to accept service after a client discharges counsel. The commenter suggested that the rule should require service be given to both the unreplaced counsel and the party.

The proposal was intended to ensure that a lawyer is always available to receive service in order to prevent a party from halting the administrative process simply by evading service. The regulatory text is clear, however, that the ALJ has the discretion whether to require former counsel to continue to accept service. Fairness to counsel is among the factors the ALJ would consider in exercising this discretion. The OTS, therefore, believes that the provision as proposed is sufficiently flexible to accommodate the concerns raised by the commenter.

The final rule changes the proposal's reference from ''service of process'' to ''service'' to clarify that this section applies to all papers that the party is entitled to receive. The section is otherwise adopted as proposed.

Section 509.8 Conflicts of Interest

The proposal sought to improve in two ways the provisions governing conflicts of interest that arise when counsel represents multiple persons connected with a proceeding.

First, the proposal sought to protect the interests of individuals and financial institutions by expanding the circumstances under which counsel must certify that he or she has obtained a waiver from non-parties of any potential conflict of interest. The former rule required counsel to obtain waivers only from non-party institutions ''to which notice of the proceedings must be given.'' The proposal required counsel to obtain waivers from all parties and non-parties that counsel represents on a matter relevant to an issue in the proceeding. It thus ensured that all appropriate party and non-party individuals and institutions are informed of potential conflicts.

Second, the proposal simplified this provision by eliminating the requirement for counsel to certify that each client has asserted that there are no conflicts of interest. The OTS believes that the former provision was superfluous because the responsibility for identifying potential conflicts resides with counsel.

One commenter noted that the proposal may inhibit multiple representation that otherwise complies with applicable ethics rules. The commenter suggested that the proposal could inappropriately tilt the proceeding in favor of the agencies.

The provision does not limit the right of any party to representation by counsel of the party's choice. Rather, it ensures that all interested persons are informed of potential conflicts so that they may avoid the conflict if they choose. In the OTS's view, it is reasonable to establish a baseline standard requiring the affirmative waiver of conflicts by all affected persons or entities in order to ensure the integrity of the administrative adjudication process. State rules of professional responsibility that impose more stringent ethical standards are unaffected by this requirement.

In addition, the OTS is unpersuaded by the argument that the conflicts provision grants the agencies significant advantage in a proceeding. Persons and parties may be well and vigorously represented even if they are not all represented by the same counsel.

Therefore, the OTS adopts this section as proposed.

Section 509.11 Service of Papers

The proposal changed this section by permitting parties, the Director, and ALJs to serve a subpoena on a party by delivering it to a person of suitable age and discretion at a party's place of work.

One commenter supported the intent of the proposal, but asserted that permitting service on a person at a person's place of work was too broad to be effective, particularly where an institution has numerous branches.

The OTS interpreted the phrase ''person's place of work'' as used in the proposal to mean the physical location at which an individual works and not as any office of the corporation or association that employs the person. To avoid confusion, the OTS has added specific reference to physical location to the regulatory text. In addition, the final rule states expressly that only an individual, not a corporation or association, may be served at a residence or place of work.

The same commenter points out, however, that the former Uniform Rules do not permit certain methods of service that are useful for serving a corporation or other association. The final rule, therefore, permits service on a party corporation or other association by delivery of a copy of a notice to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The final rule also provides that, if the agent is one authorized by statute to receive service and the statute so requires, the serving party must also mail a copy to the party. The final rule also restructures this provision for clarity.

Section 509.12 Construction of Time Limits

The proposal clarified that the additional time allotted for responding to papers served by mail, delivery service, or electronic media transmission under § 509.12(c) is not included in determining whether an act is required to be performed within ten days. The proposal also clarified that additional time allotted for responding to papers served by mail, delivery, or electronic media transmission is counted by calendar days and, therefore, a party must count Saturdays, Sundays, and holidays when calculating a time deadline.

The OTS received no comments on this section, which is adopted as proposed.

Section 509.20 Amended Pleadings

The proposal changed this section to permit a party to amend its pleadings without leave of the ALJ and to permit the ALJ to admit evidence over the objection that the evidence does not fall directly within the scope of the issues raised by a notice or answer.

One commenter asserted that the change could unduly prejudice a party if a notice were amended to add or delete allegations immediately prior to the hearing. The commenter expressed

concern that the amendment would give a party insufficient time to seek additional discovery or file for summary judgment.

The regulatory text gives the ALJ discretion to revise the hearing schedule to ensure that no prejudice results from last minute amendments to a notice. The OTS believes this approach is adequate to avoid prejudice to a party and, therefore, adopts this section as proposed.

Section 509.24 Scope of Document Discovery

The former Uniform Rules were silent on the use of interrogatories. The proposal expressly prohibited parties from using interrogatories on grounds that other discovery tools are more efficient and less burdensome and, therefore, more appropriate to administrative adjudications.

The proposal also sought to focus document discovery requests so that they are not unreasonable, oppressive, excessive in scope, or unduly burdensome to any of the parties.

Accordingly, the proposal preserved the former rule's limitation on document discovery by permitting discovery only of documents that have material relevance. However, the proposal specifically provided that a request should be considered unreasonable, oppressive, excessive in scope, or unduly burdensome if, among other things: (1) it fails to include justifiable limitations on the time period covered and the geographic locations to be searched; (2) the time provided to respond in the request is inadequate; or (3) 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 § 509.25.

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 OTS received no significant comments on this section and, therefore, adopts it as proposed.

Section 509.25 Request for document discovery from parties

The OTS proposed several changes to § 509.25. First, the proposal sought to reduce unnecessary burden by permitting a party to: (1) respond to document discovery either by producing documents as they are kept in the ordinary course of business or by organizing them to correspond to the categories in a document request; and (2) identify similar documents by category when they are voluminous and are protected by the deliberative process, attorney-client, or attorney work-product privilege.

The proposal also amended § 509.25 to permit a party to require payment in advance for the costs of copying and shipping requested documents; and clarified that, if a party has stated its intention to file a timely motion for interlocutory review, the ALJ may not release, or order a party to produce, documents withheld on grounds of privilege until the motion for interlocutory review has been decided.

The agencies received two comments on this section. One commenter sought guidance on when, how, and to whom a party must express an ''intention'' to file a timely motion for interlocutory review.

Because the ALJ may not release or order a party to produce documents, it was implicit in the proposed regulatory text that a party must make the intention to seek interlocutory review known to the ALJ. For clarity's sake, the final rule adds language to this effect.

Another commenter suggested that a request for interlocutory review should automatically stay the proceeding.

Under § 509.28(d) of the Uniform Rules, a party may request that a proceeding be stayed during the pendency of an interlocutory review. The ALJ has the discretion to decide whether a stay is appropriate. The OTS believes that this procedure adequately protects the parties. For this reason and to avoid adding unnecessary delays in the administrative proceedings, the OTS declines to provide for an automatic stay whenever a party requests interlocutory review.

One commenter asserted that permitting the OTS to require payment in advance for document copying and shipping costs would give the OTS an advantage over other creditors if the party is bankrupt following the administrative hearing. The OTS finds that this situation is rare and therefore does not outweigh the OTS's need to ensure that it receives payment. Moreover, the provision does not preclude other creditors from requiring prepayment for products or services. Accordingly, the OTS adopts this section as proposed.

Section 509.27 Deposition of witness unavailable for hearing

The proposal clarified that a party may serve a deposition subpoena on a witness who is unavailable by serving the subpoena on the witness or the witness's authorized representative. The OTS received no comments on this section.

As amended, section 509.11(d) expressly permits a party to serve a subpoena by delivering the subpoena to an agent, which would include delivery to an authorized representative. The proposed change to section 509.27 is, therefore, redundant and has not been included in the final rule.

Section 509.33 Public Hearings

The proposal changed this section to specify that a party must file a motion for a private hearing with the Director and not the ALJ, but must serve the ALJ with a copy of the motion.

The OTS received no comments on this section, which is adopted as proposed.

Section 509.34 Hearing Subpoenas

The former Uniform Rules did not specifically require that a party inform all other parties when a subpoena to a non-party is issued. The proposal required 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. Under the proposal, any party may move to quash any hearing subpoena and must serve the motion on each other party.

The OTS received no comments on this section, which is adopted as proposed.

Section 509.35 Conduct of Hearings

The proposal limited the number of counsel permitted to examine a witness and clarified that hearing transcripts may be obtained only from the court reporter. The former Uniform Rules were silent on these issues. The OTS received no comments on this section, which is adopted as proposed.

Section 509.37 Post-Hearing Filings

The proposal changed the title of this section from ''Proposed findings and conclusions'' to ''Post-hearing filings'' to describe more accurately the content of the section.

The proposal also moved, from § 509.35(b) to § 509.37(a), the provision that requires the ALJ to serve each party with notice of the filing of the certified transcript of the hearing (including hearing exhibits). The proposal added a requirement that the ALJ must use the same method of service for this notice.

Finally, the proposal clarified 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.

The OTS received no comments on this section, which is adopted with a minor technical change.

Section 509.38 Recommended decision and filing of record

Under OTS Local Rule § 509.104(h), the ALJ was required to file an index of the record when he filed the record with the Director. The proposal added this requirement to the Uniform Rules at § 509.38, and reorganized this section to improve its clarity.

The OTS received no comments on this section, which is adopted as proposed.

C. Section-by-Section Summary and Discussion of Proposed Amendments to the OTS Local Rules

Section 509.102 Discovery

The OTS proposed to revise its local rule at § 509.102(g)(2) which governs the service of discovery deposition subpoenas. The current rule permits service of deposition subpoenas only by personal service, certified mail, or overnight delivery service. The proposed rule, however, would have permitted parties to serve deposition subpoenas by any of the methods listed in Uniform Rule § 509.11(d). The OTS received no comments on this proposal. It is adopted without change.

Current § 509.102(g)(2) requires a party to serve a deposition subpoena on ''the person named therein and a copy on that person's counsel, or on that person's counsel.'' The OTS proposed to revise this provision to require a party to serve a deposition subpoena on the person named therein *or* on that person's counsel. The proposed change would conform the OTS Local Rule to the OCC Local Rule at 12 CFR 19.171.

One commenter suggested that the OTS should require a party to serve both the deponent *and* the deponent's counsel. The OTS rejects this suggestion. Initially, a party may not be able to comply with the commenter's proposed requirement. For example, where the witness to be deposed is a non-party, the party issuing the subpoena may not know whether the witness is represented by counsel and the identity of counsel. Where a *party* is to be deposed, however, counsel of record will always receive notice of the deposition under § 509.102(a).

This commenter suggests that it may be a violation of an attorney's ethics for counsel to serve a deponent, but not the deponent's attorney. The OTS Local Rule does not limit the ability of any party to make service upon a deponent's attorney where required by local ethics rules. State rules of professional responsibility that impose more stringent ethical standards are unaffected by this Local Rule.

The proposed changes to § 509.102(g)(2) are adopted with certain clarifying changes.

Section 509.104 Additional Procedures

As amended today, § 509.38 incorporates OTS Local Rule at § 509.104(h). Accordingly, the local rule is deleted.

D. Regulatory Flexibility Act

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

This final rule only imposes procedural requirements in administrative adjudications. It contains no substantive requirements. It improves the Uniform Rules of Practice and Procedure and facilitates the orderly determination of administrative proceedings. The changes in this final rule are primarily clarifications and impose no significant additional burdens on regulated institutions, parties to administrative actions, or counsel.

E. Executive Order 12866

The OTS has determined that this final rule is not a significant regulatory action as defined in Executive Order 12866.

F. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) 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 OTS. The OTS has 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 OTS has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

G. Effective Date

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 delays the effective date of regulations promulgated by the Federal banking agencies that impose additional reporting, disclosure, or other new requirements to the first day of the first calendar quarter following publication of the final rule. The OTS believes that section 302 is not applicable to this final rule, because the regulation does not impose any additional reporting or other requirements not already contained in the current version of the Uniform Rules or the Local Rules.

List of Subjects in 12 CFR Part 509

Administrative practice and procedure, Penalties.

For the reasons set out in the preamble, part 509 of chapter V of title 12 of the Code of Federal Regulations is 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. 504, 554–557; 12 U.S.C. 1464, 1467, 1467a, 1468, 1817(j), 1818, 3349, 4717; 15 U.S.C. 78(l), 78o–5, 78u–2; 31 U.S.C. 5321; 42 U.S.C. 4012a.

Subpart A—Uniform Rules of Practice and Procedure

2. Section 509.1 is amended in paragraph (e)(7) by removing the word ''and'' after the semicolon, adding paragraphs (e)(9) and (e)(10), redesignating paragraph (f) as paragraph (g) and revising it, and adding new paragraph (f) read as follows:

§ 509.1 Scope.

* * * * *

(e) * * *

(9) Any provision of law referenced in section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(f)) or any order or regulation issued thereunder; and

(10) Any provision of law referenced in 31 U.S.C. 5321 or any order or regulation issued thereunder;

(f) Remedial action under section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(g)); and

(g) This subpart also applies to all other adjudications required by statute to be determined on the record after opportunity for an agency hearing,

unless otherwise specifically provided for in the Local Rules.

3. Section 509.6 is amended by revising paragraph (a)(3) to read as follows:

§ 509.6 Appearance and practice in adjudicatory proceedings.

(a) * * *

(3) *Notice of appearance.* Any individual acting as counsel on behalf of a party, including the Director, 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 required by the administrative law judge, continue to accept service 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.

* * * * *

4. Section 509.8 is amended by revising paragraph (b) to read as follows:

§ 509.8 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 § 509.6(a):

(1) That the counsel has personally and fully discussed the possibility of conflicts of interest with each such party and non-party; and

(2) That each such party and 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.

5. Section 509.11 is amended by revising paragraphs (c)(2) and (d) to read as follows:

§ 509.11 Service of papers.

* * * * *

(c) * * *

(2) If a party has not appeared in the proceeding in accordance with § 509.6 of this subpart, the Director or the administrative law judge shall make service by any of the following methods:

(i) By personal service;

(ii) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;

(iii) If the person to be served is a corporation or other association, by delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party;

(iv) By registered or certified mail addressed to the person's last known address; or

(v) By any other method reasonably calculated to give actual notice.

(d) *Subpoenas.* Service of a subpoena may be made:

(1) By personal service;

(2) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;

(3) By delivery to an agent, which in the case of a corporation or other association, is delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party;

(4) By registered or certified mail addressed to the person's last known address; or

(5) By any other method reasonably calculated to give actual notice.

* * * * *

6. Section 509.12 is amended by revising paragraphs (a), (c)(1), (c)(2), and (c)(3) to read as follows:

§ 509.12 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 in paragraph (c) of this section, 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 Director or the administrative law judge in the case of filing, or by agreement among the parties in the case of service.

7. Section 509.20 is revised to read as follows:

§ 509.20 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 Director 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.

8. Section 509.24 is amended by revising paragraphs (a) and (b) to read as follows:

§ 509.24 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 § 509.102 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 § 509.25 of this subpart.

* * * * *

9. Section 509.25 is amended by revising paragraphs (a), (b), (e), and (g) to read as follows:

§ 509.25 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 under 12 CFR 502.7 for requests under the Freedom of Information Act (5 U.S.C. 552). 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 to the administrative law judge 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.

* * * * *

10. Section 509.33 is amended by revising paragraph (a) to read as follows:

§ 509.33 Public hearings.

(a) *General rule.* All hearings shall be open to the public, unless the Director, in the Director's 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 Director 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 Director. The form of, and procedure for, these requests and replies are governed by § 509.23 of this subpart. 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. Section 509.34 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 509.34 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. Section 509.35 is amended by redesignating paragraph (a)(3) as paragraph (a)(4), by adding a new paragraph (a)(3), and by revising paragraph (b) to read as follows:

§ 509.35 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. Section 509.37 is amended by revising the section heading and paragraph (a)(1) to read as follows:

§ 509.37 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 or within such longer period as may be ordered by the administrative law judge.

* * * * *

14. Section 509.38 is revised to read as follows:

§ 509.38 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 § 509.37(b) of this subpart, the administrative law judge shall file with and certify to the Director, 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 Director for final determination the record of the proceeding, the administrative law judge shall furnish to the Director 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.

Subpart B—Local Rules

15. Section 509.102 is amended by revising paragraph (g)(2) to read as follows:

§ 509.102 Discovery.

* * * * *

(g) * * *

(2) *Service.* The party requesting the subpoena must serve it on the person named therein or upon that person's counsel, by any of the methods identified in § 509.11(d) of this part. The party serving the subpoena must file proof of service with the administrative law judge.

* * * * *

§ 509.104 [Amended]

16. Section 509.104 is amended by removing paragraph (h) and by redesignating paragraph (i) as paragraph (h).

By the Office of Thrift Supervision.

Dated: April 4, 1996.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 96–10342 Filed 5–3–96; 8:45 am]

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Part III

Department of Housing and Urban Development

24 CFR Part 901

Office of the Assistant Secretary for Public and Indian Housing: Public Housing Management Assessment Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR PART 901

[Docket No. FR–3447–P–01]

RIN 2577–AB30

Office of the Assistant Secretary for Public and Indian Housing; Public Housing Management Assessment Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes changes to the Public Housing Management Assessment Program (PHMAP). PHMAP provides policies and procedures to identify PHA management capabilities and deficiencies, and assists HUD State/Area Offices in accountability monitoring and risk management. PHMAP also establishes procedures for developing, negotiating and executing memoranda of agreement between HUD and troubled agencies and agencies troubled with respect to the program under section 14 that set forth targets, strategies, incentives and sanctions for improving performance. Procedures to follow with respect to housing administered by PHAs that substantially default on their management responsibilities are included in PHMAP. PHMAP applies to public housing agencies (PHAs) and resident management corporations (RMCs), and any other entities under contract to manage public housing, but does not apply to Indian housing authorities, nor to the Family Self-Sufficiency Program authorized under section 23.

DATES: Comment due date: July 5, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, 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: MaryAnn Russ, Deputy Assistant Secretary for Public and Assisted Housing Operations, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1380. A telecommunications device for hearing or speech impaired persons (TTY) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The proposed information collection requirements contained at § 901.100 of this rule have been submitted to the Office of Management and Budget (OMB) for review, under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

(a) In accordance with 5 CFR 1320.5(a)(1)(iv), the Department is setting forth the following concerning the proposed collection of information:

(1) Title of the information collection proposal:

Public Housing Management Assessment Program (PHMAP)

(2) Summary of the collection of information:

PHAs shall be required to certify to seven indicators and one component because information regarding these indicators/ component is not presently reported to HUD by PHAs on any form. The use of Form HUD–50072, rather than the preparation and submission of a full data report, was judged to be the least intrusive method of gathering the information.

(3) Description of the need for the information and its proposed use:

Section 502 of the National Affordable Housing Act of 1990 (NAHA) establishes seven specific indicators and directs the Secretary to develop no more than five other factors (indicators) deemed appropriate to assess the management performance of public housing agencies (PHAs) in all major areas of management operations. The designation of PHAs as troubled or as troubled with respect to the program under Section 14 (mod-troubled) is based upon PHA performance under the indicators. The proposed information collection will be used by HUD to assess annually all PHAs at the beginning of the PHA fiscal year to allow the Department to fulfill this mandate of NAHA.

(4) Description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information:

Respondents will be PHAs. The estimated number of respondents is included in paragraph (5), immediately below. The proposed frequency of responses is once annually.

(5) Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

REPORTING BURDEN

Reference	Number of respondents	Freq. of response	Est. avg. time (hours)	Est. annual burden response (hrs.)
1–99 Unit PHAs	1,608	1	2.25	3,618.0
100–499 Unit PHAs	1,274	1	2.45	3,121.3
500–1249 Unit PHAs	244	1	3.45	841.8
1250–3999 Unit PHAs	102	1	4.05	413.1
4000+ Unit PHAs	40	1	4.85	194.0
Total reporting burden				8,188.2

Recordkeeping Burden

Recordkeepers	3,268.0
Hours per recordkeeper	1.0
Total annual responses	327.0
Total burden	8,515.2

(b) In accordance with 5 CFR 1320.8(d)(1), the Department is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR–3447) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

and

Reports Liaison Officer, Office of the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development, 451—7th Street, SW., Room 4244, Washington, DC 20410

II. Background

The Public Housing Management Assessment Program (PHMAP) at 24 CFR part 901 has been established in accordance with section 502 of the National Affordable Housing Act (NAHA) (approved November 28, 1990, Pub. L. 101–625), as amended by the Departments of Veterans Affairs and Housing and Urban Development (HUD), and Independent Agencies Appropriations Act, 1992 (92 App. Act) (approved October 28, 1991, Pub. L. 102–139) and the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992). The need to identify and assist troubled PHAs and PHAs troubled with respect to section 14 (mod-troubled), and to provide for consistently high quality management of PHAs was statutorily recognized in section 502 of NAHA, which amended section 6(j) of the 1937 Act (42 U.S.C. 1437d(j)). Section 502 requires the Department to develop indicators to assess the management performance of PHAs. A PHA assessed as troubled or mod-troubled must enter into a memorandum of agreement (MOA) with HUD that sets forth targets, strategies and incentives for improving its management performance, and provides for sanctions if improved performance does not result. Section 502 also provides that if a PHA substantially defaults upon its agreement or with respect to other covenants or conditions to which it is subject, the Department may solicit proposals from other public housing agencies and private housing management agents for the management of the housing administered by the defaulted PHA. Alternatively, following a default, the Department may petition the appropriate State or Federal court to appoint a receiver to manage the defaulted PHA. The Department may also require a defaulting PHA to make other acceptable arrangements for managing all or part of its operation in the best interests of the residents.

A proposed rule to implement section 502 as the Public Housing Management Assessment Program (PHMAP) at 24 CFR part 901 was published in the Federal Register on April 17, 1991 (56 FR 15712), with a 60-day comment period. The Department received 114 comments on the PHMAP proposed rule.

The 92 App. Act, passed after the publication of the pro-posed rule, amended NAHA section 502 in four ways: The number of factors that may be used to assess the management performance of PHAs is limited (seven indicators that must be used for assessment purposes were listed in section 502 of NAHA, and the Department was authorized by the 92 App. Act amendments to develop five additional indicators as it deemed appropriate); the evaluation of PHAs must be administered flexibly to ensure that they are not penalized for circumstances beyond their control; the weights assigned to indicators must reflect the differences in management difficulty that result from physical condition and neighborhood environment; and the determination of a PHA's status as ''troubled with respect to the program under section 14'' is to be based upon factors solely related to its ability to carry out that program. In a related 92 App. Act amendment to section 14 of the 1937 Act, the determination of whether a PHA is ''troubled with respect to the modernization program'' (the equivalent of mod-troubled) is to consider only the PHA's ability to carry out the modernization program effectively based upon the PHA's capacity to accomplish the physical work with decent quality; in a timely manner; under competent contract administration; and with adequate budget controls.

An interim rule was published on January 17, 1992, (57 FR 2160) with a comment period of 120 days. After the publication of the PHMAP interim rule, a number of statutory changes to PHMAP were made by section 113 of HCDA 1992. Section 113(a) requires an on-site, independent assessment of a PHA that is designated as mod-troubled and/or troubled. Paragraph (b) of this section provides for additional remedies upon the occurrence of a substantial default. The Department may, under section 113(c), make available, to housing managers appointed after a substantial default, the assistance necessary to remedy the substantial deterioration of living conditions in individual public housing developments or to remedy other related emergencies that endanger the health, safety and welfare of the residents. Annual reporting requirements to Congress that only affect the Department are the subject of section 113(d). Section 113(e) makes the management assessment provisions of PHMAP applicable to RMCs. The implementation of these sections is discussed below in this preamble under the heading, Summary Of Changes To The PHMAP Interim Rule.

Subsequent to the statutory changes to PHMAP made by section 113 of HCDA 1992, the Department established a consultation group and held a series of meetings to review existing PHMAP procedures and the individual indicators. The group consisted of representatives of PHAs of all sizes from across the country with a wide range of PHMAP scores, public housing industry groups, private management firms, and HUD field staff. Resident groups were solicited for their recommendations as well. Revised indicators were field tested during the summer of 1994 at 45 PHAs of all sizes throughout the country. The results of the field test were summarized and analyzed, which resulted in recommendations for changes to the indicators.

The Department has determined that the revised PHMAP should be issued as a proposed rule due to the degree of changes to the individual indicators and the program itself. For example, three indicators have been eliminated, four indicators have been combined into two indicators, and other indicators have been completely rewritten. The proposed changes are the result of a number of considerations, including comments received on the interim rule, inquiries and additional comments received from the field and the regulated community, the field test conducted during the summer of 1994, and the Department's experience in administering the program. By issuing a proposed rule, the Department is providing the public an additional opportunity to comment.

III. Regulatory Reinvention

On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. HUD has determined that the regulations for PHMAP can be improved and streamlined by eliminating unnecessary provisions.

Several provisions in the regulations repeat statutory language from the 1937 Act. It is unnecessary to maintain statutory requirements in the Code of Federal Regulations (CFR), since those requirements are otherwise fully accessible and binding. Furthermore, if regulations contain statutory language, HUD must amend the regulations whenever Congress amends the statute. Therefore, the new part 901 proposed here does not repeat any statutory language, but only implements requirements that are necessary to augment and implement fully section 6(j) of the 1937 Act, which provides the statutory authority for PHMAP. This proposed rule further reinvents PHMAP by reducing the number of indicators from twelve to eight; eliminating the designation of subparts, which are unnecessary; and rewriting the entire remaining rule text to promote clarity.

IV. Summary of Changes to the PHMAP Interim Rule

Only those portions of the current PHMAP regulation proposed for revisions are addressed below.

HCDA 1992 Section 113 Amendments

The Department determined, in accordance with 24 CFR 10.1, that prior public notice and comment were unnecessary to implement paragraphs (a) and (c) of section 113, because these paragraphs involve the exercise of little or no discretion on the part of the Department. Section 113(d) applies only to the Department and does not require a rule. Sections 113 (b)(1) and (e) of HCDA 1992 do require elaboration of the statutory language, and are included in this proposed rule.

HCDA 1992 section 113(e) requires the assessment of RMCs, and makes the provisions under paragraph (j)(2) of section 6 of the 1937 Act apply to RMCs as well as to PHAs. Paragraph (j)(2) contains provisions relating to: (1) Establishment of procedures for designating troubled PHAs; (2) commendation of exemplary PHAs; (3) PHA appeal of designation as a troubled agency; (4) agreements between HUD and troubled and/or mod-troubled PHAs; and (5) new provisions added by HCDA 1992 section 113(a) that require independent assessments of PHAs that are designated troubled and/or mod-troubled.

The Department proposes to implement section 113(e) by adding a definition of RMC to § 901.5 that would refer to 24 CFR part 964, the regulation that provides for resident participation and management in public housing in accordance with section 20 of the 1937 Act. This proposed rule would provide for the management assessment of RMCs in a manner consistent with the regulatory framework established under section 20 and 24 CFR part 964 for RMC management of a development.

The management assessment of an RMC will necessarily differ from that of a PHA. Because an RMC enters into a contract with a PHA to perform specific management functions on a development-by-development basis, and because the scope of the management that is undertaken varies, not every indicator that applies to a PHA would be applicable to each RMC. An additional significant feature of RMC management is that 24 CFR 964.225(d), entitled, *Management contract*, and 24 CFR 964.225(h), entitled, *Prohibited activities*, provide that a PHA may enter into a management contract with a resident management corporation, but a PHA may not contract for assumption by the resident management corporation of the PHA's underlying responsibilities to the Department under the ACC.

For this reason, the limited management responsibility of RMCs in terms of both: (1) The areas in which they perform management functions, and (2) the fact that the PHA remains ultimately responsible to HUD under the ACC, this proposed rule would implement the management assessment of RMCs as follows: § 901.100, entitled, ''Data collection,'' would be amended to provide that when a PHA submits its PHMAP certification, it must identify developments managed by an RMC and the management functions undertaken by the RMC at those developments. The PHA would be responsible for obtaining from the RMC and submitting to HUD, along with its own certification, the PHMAP certification for the management functions undertaken by the RMC. For example, if an RMC were responsible for rent collection in a particular development, the PHA would be required to identify in its certification the development and management function performed by the RMC, and obtain from the RMC a certification of the percent of rents uncollected, which would be submitted to HUD along with the PHA's certification. Similarly, for those management functions undertaken by an RMC for which no certification is necessary (i.e., the data is already available to HUD, such as the indicator for modernization), the PHA would still be required to identify in its certification form this RMC-managed function and the development involved. The applicable indicators for the RMC would be scored by the Department, and the resulting grades would be transmitted to the PHA as a part of the State/Area Office notification. The PHA would be required to forward promptly the RMC's score.

Section 901.105 of the rule, entitled ''Computing assessment score,'' requires no amendment to provide for the assessment of an RMC's management. Those indicators that would apply to an RMC, based on the management functions assumed by the RMC, would be graded just as they would for a PHA. However, because of the limited scope of management involved, an RMC would not receive an overall designation of high performer, standard, or troubled, but only a grade on each applicable indicator. In addition, because the PHA and not the RMC is ultimately responsible to the Department under the ACC, the PHA's score will be based on all of the developments covered by the ACC, including those with management functions assumed by an RMC. RMC-managed developments would, thus, be assessed to measure the RMC's performance on an indicator-by-indicator basis, and as a part of the PHA's overall performance. As discussed above, this result is necessary because of the limited nature of an RMC's management functions and the regulatory and contractual relationships among HUD, PHAs and RMCs. A new paragraph (c) is added to § 901.100, *Data collection*, to provide for the assessment of RMCs.

To apprise an RMC of its indicator grades, § 901.120 would be amended to provide that the State/Area Office notification to the PHA would include the grades of the RMC, if any, and that the PHA must immediately notify the RMC, in writing, of its grades.

Because an RMC would be assessed on an indicator-by-indicator basis, and would not receive an overall designation such as troubled, most of the provisions of section 6(j)(2) of the 1937 Act could not apply to RMCs, since most of those provisions (the establishment of procedures for designating troubled PHAs; appeals of designation as a troubled agency;

agreements between HUD and troubled PHAs; and, new provisions added by HCDA 1992 section 113(a) that require independent assessments of PHAs that are designated troubled) are triggered by a designation of troubled.

One provision of section 6(j)(2) that is not dependent upon a designation of troubled and that may appropriately be applied to RMCs pertains to the commendation of exemplary PHAs. Even though RMCs would not receive an overall designation of high-performer, standard, or troubled, § 901.130, Incentives, would be amended to permit an RMC that scored a grade of A on each of its indicators to receive a Certificate of Commendation from the Department as well as special public recognition.

With respect to making the section 6(j)(2) provision for agreements between HUD and troubled PHAs applicable to RMCs, since an RMC would not be designated troubled, a memorandum of agreement under § 901.140 would not be applicable. HUD has determined, however, that it would be appropriate to provide guidance for the improvement of an RMC's management functions, and that the proper tool under PHMAP for this purpose would be an improvement plan under § 901.145. An improvement plan is negotiated to improve performance under those individual indicators that are the relevant measures of management performance for an RMC. Section 901.145 would be amended to permit the negotiation of an improvement plan that would include the RMC, the PHA, and the Department.

Application of PHMAP to Alternative Management Entities

In addition to extending coverage to RMCs, this proposed rule would also extend PHMAP to apply to any other alternative management/PHA relationship, whether the alternative management entity (AME) is a receiver, private contractor, private manager, or any other entity that is under contract with a PHA, or that is otherwise duly appointed or contracted (for example, by court order or agency action), to manage all or part of a PHA's operations. It is just as necessary to assess the management performance of AMEs as it is to assess PHAs or RMCs, to follow the expressed policy of the 1937 Act, ''to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of lower income''.

AMEs would be assessed following the procedures used for PHAs or RMCs, depending upon the extent of the management responsibilities assumed. An AME that assumes all, or substantially all, of a PHA's management responsibilities (for example, under court order, or following a substantial default and pursuant to an award under a competitive proposal) would also assume the PHA's PHMAP responsibilities and would be assessed accordingly. An AME that was contracted to perform a limited number of management functions would be assessed following the procedure used for RMCs.

Although the contractual relationship under the ACC is between the PHA and the Department, there may also be a contractual relationship between the AME and the PHA, or HUD and the AME. To ensure quality management in such contractual relationships, minimum performance criteria that relate to the PHMAP indicators, as applicable, should be included in the contract. Failure to meet the performance criteria would be a basis for termination of the contract. The provisions that explicitly address AMEs and establish their treatment under PHMAP as following the procedures for either PHAs or RMCs are found at §§ 901.1 and 901.5.

Definitions—§ 901.5

This portion of the regulation is revised to include new definitions and revised definitions as a result of the proposed revisions to the indicators. Definitions that no longer apply have been eliminated. Some definitions have been expanded to include instructions for calculation.

Indicators—§§ 901.10–901.40

As indicated in section III, ''Regulatory Reinvention,'' above, this rule would reduce the number of PHMAP indicators from twelve to eight. A proposed sample certification for these revised indicators is included as Appendix 3 of this preamble.

Indicator #1, Vacancy Percentage and Unit Turnaround

The vacancy indicator and the unit turnaround indicator of the current part 901 have been combined in proposed indicator #1. The proposed indicator has two components. The first component (with a weight of ×2) measures the vacancy rate and, if applicable, the progress a PHA has made in reducing the vacancy rate. The second component (with a weight of ×1), to be used only when a PHA scores below a C on the first component, measures turnaround time. The assumption is that if vacancies are at a C level or above, the PHA does not have a problem with turning around vacant units.

Because the vacancy rate is a clear manifestation of management effort and embodies the essence of a PHA's mission, it is weighted more heavily than the process-oriented unit turnaround component.

The Department is proposing to use a single method to calculate the actual and adjusted vacancy rate. Instead of taking a ''snapshot'' picture of the vacancy rate at a certain date, or calculating an average over a thirty day period, the vacancy rate will be calculated by computing the ratio of vacancy days to unit days available over the fiscal year. The adjusted vacancy rate is computed the same way, but with eligible exemptions, such as vacancy days attributable to modernization. The Department believes this method to be the most accurate depiction of performance.

If a PHA elects to certify to the reduction of the vacancy rate over the previous three years, the PHA shall retain justifying documentation to support its certification for HUD post review.

For the calculation of the adjusted vacancy rate and turn-around time, the vacancy days for units in the following categories (fully defined in the rule at § 901.10) shall be exempted:

1. Vacant unit undergoing modernization.
2. Vacant units in an approved demolition or disposition program.
3. Vacant units that are documented to be uninhabitable for reasons beyond the PHA's control.
4. Vacant units in which resident property has been abandoned, but only if State law requires the property to be left in the unit for some period of time, and only for the period stated in the law.
5. Vacant units that have sustained casualty damage, but only until the insurance claim is adjusted, i.e., funds to repair the unit are received.
6. Units that are used for non-dwelling purposes, dwelling units that are occupied by employees of the PHA, and units that are used for resident services.
7. Vacant units required to remain vacant because of fire/ police investigations, coroner's seal, or court order.
8. Units kept vacant because of code violations caused for reasons beyond the control of the PHA, rather than as a result of management and/or maintenance failures by the PHA.
9. Units vacant for circumstances and actions beyond the PHA's control.

Definitions for indicator #1 are as follows:

1. Actual vacancy rate: This is the vacancy rate calculated without any adjustments. This is calculated by dividing the total number of vacancy days by the total number of unit days available for occupancy. The maximum number of vacancy days for any unit is the number of days in the year, regardless of the total amount of time the unit has been vacant. An example of this calculation for a hypothetical PHA with 100 units available for occupancy follows. Unit days are calculated by taking the total number of units available for occupancy and multiplying by the number of days in the year.

Unit days available: 100 units×365 days per year = 36,500 actual days available for occupancy

Vacancy days are calculated by adding the total number of days vacant from all units that were vacant for any reason during the PHA's fiscal year. For example:

Unit and reason for vacancy	Days vacant during FY
6 Move-out	21
10* Down for modernization	120
12* Down for modernization	140
15* Down for modernization	194
10 Lease up after modernization	10
12 Lease up after modernization	10
15 Lease up after modernization	21
32 Transfer	15
81* Fire	35
81 Lease after insurance adjustment	23
96 Move-out	15
41 Move-out	28
39 Move-out	40
57 Move-out	18
61* Down for modernization	230
22* Down for modernization	90
61 Lease up after modernization	10
22 Lease up after modernization	3
Total Actual Vacancy Days	1,023

The actual vacancy rate for the year is:

$$\frac{1{,}023\text{total actual vacancy days}}{36{,}500\text{ actual days under the ACC}} = .03 \text{ (an actual vacancy rate of 3\%)}$$

The asterisks following the unit numbers denote vacancy days that can be exempted in computing the adjusted vacancy rate.

2. Adjusted vacancy rate: This is the vacancy rate calculated after excluding the vacancy days that are exempted for any of the eligible reasons included here. The adjusted vacancy rate for the hypothetical 100 unit PHA would be calculated as follows:

Unit and reason for vacancy	Adjusted days vacant during FY
6 Move-out	21
10 Lease up after modernization	10
12 Lease up after modernization	10
15 Lease up after modernization	21
32 Transfer	15
81 Lease after insurance adjustment	23
96 Move-out	15
41 Move-out	28
39 Move-out	40
57 Move-out	18
61 Lease up after modernization	10
22 Lease up after modernization	3
Total Vacancy Days, as Adjusted	214

The PHA was permitted to exempt 809 of the vacancy days for eligible reasons. To calculate the adjusted rate, the 809 days are removed from the days vacant (numerator). The adjusted vacancy rate for the year is:

$$\frac{1{,}023 - 809 = 214}{36{,}500} = .0059 \text{ (an adjusted vacancy rate of .6\%)}$$

3. Reduced actual vacancy rate in the previous three years: this is a comparison of the vacancy rate in the PHMAP assessment year (immediate past fiscal year) to the vacancy rate during the first year of the previous three year period. In the case of the hypothetical PHA discussed earlier, the assumption is made that the actual vacancy rate during the first year of the three year period was 40 percentage points, compared to the assessment year with a 22 percentage point vacancy rate. This is a vacancy rate reduction of 18 percentage points, calculated as follows:

Percentage points vacancy rate in the earlier year, minus	40
Percentage points vacancy rate in the assessment year, equals	22
Percentage points reduction in the vacancy rate	18

4. Average unit turnaround time: the annual average of the total number of turnaround days between the move-out date and the date a new lease takes effect. Each time an individual unit is re-occupied (turned around) during the fiscal year, the turnaround days for that unit shall be counted in the turnaround time. Unlike vacancy days, which cannot exceed the number of days in the fiscal year, turnaround days include all the days between the last move-out and the date a new lease takes effect, including any turnaround days in prior fiscal years. Only units that are re-occupied during the fiscal year are included in the turnaround time calculation. An example of this calculation is as follows for a hypothetical PHA that had 15 units turned over in the assessment year:

Unit	Turn-around days	Days exempted	Net days
12	100	80 (modernization days).	20
14	10	.....do	10
31	12	.....do	12
36	96	86 (modernization days).	10
18	413	.....do	413
6	4	.....do	4
41	13	.....do	13
59	74	60 (modernization days).	14

Unit	Turn-around days	Days exempted	Net days
32	2	.....do	2
96	14	.....do	14
2	60	40 (fire damaged unit).	20
4	21	.....do	21
6	8	.....do	8
13	29	.....do	29
22	19	.....do	19
Total Turnaround Days During the Fiscal Year (FY)			590

Annual average vacant unit turnaround time for the FY:

$$\frac{\text{190 total turnaround days during the FY}}{\text{15 units re-occupied during the FY}} = 12.7 \text{ days}$$

5. Approved, funded, on-schedule annual modernization program: Includes any modernization program, funded under the Comprehensive Grant Program (CGP), the Comprehensive Improvement Assistance Program (CIAP), Vacancy Reduction Program (VRP), or any other source, if a PHA is in conformance with its current implementation schedule as approved by the PHA Board of Commissioners and/or HUD.

6. Turnaround days: The days between the last move-out and the date a new lease takes effect, including any turnaround days in prior fiscal years.

7. Vacancy day: A day when a unit is not under lease by an eligible low-income resident, unless the vacancy day is exempted for an eligible reason.

8. Vacant unit: Is a dwelling unit that is not under lease to an eligible family. Units under lease for non-dwelling uses should not be included in the calculation of this indicator.

9. Available unit: A dwelling unit (occupied or vacant) under the PHA's ACC.

This proposed combined indicator has a weight of #2.

Indicator #2, Modernization

(This indicator is automatically excluded if a PHA has no modernization program.)

This proposed indicator was changed very little with the original five components remaining virtually the same. However, the weight values for component #1, expenditure of funds, and component #2, obligation of funds, have been changed so that greater emphasis is given to obligation of funds in relation to expenditure of funds. This is exactly the opposite of the current interim rule, where the emphasis is placed on expenditure of funds. This change recognizes the importance of getting projects under contract, while at the same time acknowledging that often it is necessary to hold back payments to contractors due to disputes over the quality of the work or materials.

A new feature in component #1, expenditure of funds, and component #2, fund obligation, would require, for grade A, PHAs that are not on schedule to have self-executed a time extension within 30 calendar days after the expenditure or obligation deadline with the extension to be based on reasons outside of their control.

For component #3, contract administration, and component #4, quality of the physical work, the number of possible grades has been reduced from six to three, the three being A, C and F. ''Significant findings'' for these two components will be redefined prior to the effective date of any changes to the PHMAP. Component #5, budget controls, has been changed to reflect the final CGP rule which permits agencies to move work items between approved CGP annual statements and the latest approved five-year action plan.

This proposed indicator has a weight of x1.

Indicator #3, Rents Uncollected

The method for calculating the amount of rents uncollected for this proposed indicator has been simplified to a basic ratio comparing the total amount of rents billed during the assessment year, to the amount of rent collected during the assessment year. In the current interim PHMAP rule, PHAs are instructed to include the accounts receivable owed at the beginning of the assessment year and to deduct the total amount of accounts receivable that have been written off during the year for residents no longer in possession. Both of these adjustments have been eliminated in the proposed indicator as not being directly relevant to rent billed and collected in the current assessment period.

The percentage of rents uncollected refers to the proportion of current dwelling rent that was billed during the assessment year, but not collected during the assessment year. The calculation is made as of the close of business on the last business day of the fiscal year. ''Current dwelling rent'' excludes retroactive rent charges (including those identified through the Tenant Integrity Program), maintenance charges, excess utility charges, late charges, and any other charges not specifically identified as dwelling rent.

This proposed indicator has a weight of x1.5.

Indicator #4, Work Orders

The current indicator #4, energy consumption, has been combined with the overall measurement of financial performance, which is now indicator #6.

The new proposed indicator #4, work orders, continues to measure PHA performance in the handling of both emergency and non-emergency work orders, but under this proposed rule, the measurement will be in two components instead of one. The proposed indicator grade will be based on the average number of days it takes for a work order to be completed rather than the percentage of work orders outstanding at the end of a PHA's fiscal year.

The Department believes that assessing the average amount of time it takes to complete work orders is more equitable. Consider the following scenario:

Two PHAs have a fiscal year-end date of June 30, 1995. The first PHA has five work orders received on June 29, 1995, and did not complete them until July 2, 1995. The second PHA has five work orders received on January 1, 1995, and completed them on June 29, 1995. If both PHAs received the same amount of work orders, the second PHA would receive a higher grade under the current method of grading this indicator, even though it took the second PHA much longer to complete the work orders.

The first component measures emergency work order performance; the second component measures the average amount of time it takes to complete non-emergency work orders.

The proposed indicator includes more definitions and makes clear the Department's intention that all work orders should be tracked, except those exempted for modernization, issued to prepare a vacant unit for re-rental, and issued for the performance of cyclical maintenance. Implicit in this indicator is the adequacy of the PHA's work order system in terms of how a PHA accounts for and controls its work orders, and its timeliness in preparing/issuing work orders. As such, the adequacy of a PHA's work order system will be part of the confirmatory review of this indicator.

If a PHA elects to certify to the reduction in time it takes to complete work orders, the PHA shall retain justifying documentation to support its certification for HUD post review.

This proposed indicator has a weight of x1.5.

Indicator #5, Inspection of Units and Systems

This proposed indicator has undergone significant changes. Instead

of having four components, it now has only two, each with a weight of x1. Component #1 examines the percentage of occupied units, out of all of a PHA's units (except those permitted to be exempted), that the PHA inspects on an annual basis in order to determine short-term maintenance needs (for which work orders are issued) and long-term modernization needs (which are referred to and included in the PHA's comprehensive plan for modernization).

Component #2 examines the effectiveness of a PHA's annual inspection of its major systems, as systems are defined herein, and the maintenance of those systems either as part of the inspection process, or through the issuance of a work order; or, if a work order is not issued, by inclusion in the PHA's comprehensive plan for modernization. While the current indicator assesses the repairs to units and systems, the new proposed indicator makes it clear that work orders that are generated as of result of components #1 and #2 are measured primarily under indicator #4, outstanding work orders, unless the repair is completed during the inspection or deferred to the modernization program.

This proposed indicator also makes it clear that PHAs are expected to inspect to the standard specified in the local housing/occupancy code, as long as that code is at least equivalent to or exceeds Section 8 Housing Quality Standards (HQS). Implicit in this indicator is the adequacy of the PHA's inspection program in terms of the quality of a PHA's inspections, and how a PHA tracks both inspections and needed repairs. As such, the adequacy of a PHA's inspection program will be part of the confirmatory review of this indicator.

The Department has more clearly defined the units, both vacant and occupied, which may be exempted from an annual inspection.

Units in the following categories (fully defined in the rule at § 901.30) are exempted and not included in the calculation of the total number of units, and the number and percentage of units inspected. Systems that are a part of individual dwelling units that are exempted, or in part of buildings where *all* of the dwelling units in the building are exempted, are also exempted from the calculation of proposed indicator #5.

1. Occupied units where the PHA has made two documented attempts to inspect.

2. Vacant units undergoing modernization.

3. Vacant units in an approved demolition or disposition program.

4. Vacant units that are documented to be uninhabitable.

5. Vacant units vacant for the full immediate past fiscal year that have been exempted under indicator #1 for any of the reasons for which exemptions are permitted under that indicator (except those units that are used for non-dwelling purposes or that are occupied by employees of the PHA and units that are used for resident services).

This proposed indicator has a weight of x1.

Indicator #6, Financial Management

This proposed indicator combines, in two components, indicator #4, energy consumption; and indicator #9, operating reserves. The first component assesses the amount of cash reserves in relation to total actual routine expenses. The second component is required only if a PHA scores below a grade C on component #1. The Department is offering two options for component #2. Option A compares energy and utility expenses to the average of those expenses computed on a three year rolling base; and option B measures whether or not a PHA has conducted an energy audit and implemented the improvements recommended as a result of the energy audit. PHAs with tenant-paid utilities in all their units will not be assessed on energy/utility consumption even if they score below a grade C in cash reserves. The rationale for measuring energy consumption only if a PHA scores below a grade C in the first component is that if a PHA is in good financial health, the Department can reasonably conclude that energy/utility usage is being well-managed.

A PHA that has cash reserves equal to or greater than 10% of total actual routine expenses will be assessed only on the cash reserves component. This proposed component has a weight of x2.

The proposed energy/utility component, option A, is substantially different from the current energy indicator in that it includes water and sewage usage, and the adjustment for the heating degree day (HDD) factor has been eliminated. The elimination of the HDD factor from the calculation of this component is in accordance with Notice PIH 94–81, dated November 18, 1994. On October 13, 1994, a final rule was published in the Federal Register that eliminated the application of the HDD factor for utility consumption. This rule will first affect PHAs with fiscal year ending December 31, 1995.

As stated previously, option B for the energy/utility component assesses the conduct of an energy audit and the implementation of recommendations that resulted from the energy audit. The Department is particularly interested in receiving comments regarding the energy/utility component to determine what the national preference is for this component. PHAs are asked to indicate whether they prefer option A; option B; or the choice of being able to use either option for their PHMAP certification and assessment.

This proposed component has a weight of x1.

A sample worksheet for computing component #1 is included as Appendix 1 of this preamble; and two sample worksheets for computing component #2 are included as Appendix 2 of this preamble.

This proposed indicator has a weight of x1.

Indicator #7, Resident Involvement

PHAs with 100 units or less shall not be assessed under this indicator. This indicator reflects the Department's new emphasis on Section 3 programs to encourage resident employment. As in the current resident initiatives indicator, this indicator assesses a PHA's efforts to involve residents to improve the community in which they live. If the PHA is participating in any HUD grants, such as the Tenant Opportunity Program, Youth Apprenticeship Program, etc., this component assesses a PHA's success in implementing these programs. This proposed indicator has a weight of x1.

The Department believes that consumer satisfaction is critical in public housing, and is in the process of conducting a national study on the issue. The Department is also seriously considering including a component under this indicator that assesses consumer satisfaction. Therefore, HUD is especially interested in receiving comments regarding whether or not PHAs should be required to conduct resident surveys on a periodic basis, and whether such a survey should be standardized.

Indicator #8, Security

It was HUD's intention that PHAs with 100 units or less not be assessed under this indicator, and this is stated in the text of the proposed rule, but HUD is specifically soliciting comments on whether this indicator should apply to such PHAs. Recognizing that many public housing communities are under siege by gangs, violent criminals and drug dealers who threaten the safety and welfare of decent, responsible residents, President Clinton has announced a ''One Strike'' policy in which people in public housing who engage in drug and other criminal activity will be barred from admittance to public housing or

evicted, as applicable. This policy is supported by a law recently passed by Congress entitled the Housing Opportunity Program Extension Act of 1996 (the Extension Act) (Pub. L. 104–120, approved March 28, 1996). The Extension Act expands the statutory authority of PHAs to keep persons engaged in illegal activities out of public housing. In furtherance of President Clinton's policy and the Extension Act, the Department is adding a new indicator that assesses security. The security indicator will consider a PHA's ability to perform such activities as: Track crime-related problems in their developments; take action with local police authorities to improve law enforcement, lease enforcement and crime prevention; adopt and implement tough applicant screening and resident eviction policies and procedures; and meet goals under any HUD-funded drug prevention or crime reduction program. Although applicant screening and resident eviction policies and procedures must be tough, the proposed rule would require such actions to be appropriately taken. By using the term ''appropriately'' in the text of the rule, HUD intends to preserve PHAs' ability to act consistently with the provisions of 24 CFR 966.4(5)(i), *Eviction for criminal activity—(i) PHA discretion to consider circumstances*. This proposed indicator has a weight of x1.

With respect to this proposed security indicator, HUD is particularly interested in comments regarding the desirability of holding PHAs responsible for demonstrating systems to take action with local police authorities to improve law enforcement, lease enforcement and crime prevention. HUD believes that such cooperative action is critical to residents' well-being, but some have expressed concern whether PHAs should be held accountable for obtaining cooperation from another party (the police). In addition, HUD specifically invites comments regarding the reasonability of the proposed component which rates PHAs based on the percentage of goals they have met in crime reduction-related programs.

Data Collection—§ 901.100

The length of time a PHA has to submit its form HUD–50072, PHMAP Certification, to the State/Area Office has been reduced from 90 days to 45 days after the end of a PHA's fiscal year. This change has been made because many comments have stated that the overall PHMAP process takes too long. Under the current program, it could be a minimum of nine months before a PHA knows its final PHMAP score after going through the appeal process. The 45 day period is consistent with other reporting due date requirements, such as the submission of year-end financial statements and the submission of the CGP annual report. A PHA that does not submit its year-end reports in a timely manner may receive a grade of F for the applicable indicators. PHAs will no longer be allowed to submit past due reports in support of an appeal and expect the appeal to be granted. State/Area Offices will be required by the Department to complete the PHMAP assessments within an additional 45 days, thereby reducing the overall time for the completion of a PHMAP assessment to 90 days after the end of a PHA's fiscal year.

The reporting requirements for PHAs where management functions have been assumed by an RMC or other alternative management entity have been included in the regulation. A PHA's certification will be required to identify the development and management functions assumed by the RMC or AME, and the PHA will be required to obtain a certified questionnaire from the RMC or AME as to the management functions undertaken by the RMC or AME. The RMC's or AME's certification will be required to be approved by its executive director or chief executive officer of whatever title, and the PHA will be required to submit the RMC's or AME's certified questionnaire along with its own certification.

Any alternative management/PHA relationship is assessed under the PHMAP, as discussed above in this preamble, whether the alternative management is an RMC, a receiver, private contractor, private manager, or any other entity that is under contract with a PHA to manage all or part of its operations.

Guidance to PHAs regarding how to calculate each applicable indicator and component will be issued in a handbook and/or guidebook. Such issuances will coincide with the effective date of any changes to the PHMAP.

Computing Assessment Score—§ 901.105

Indicator and Component Weights

The weights of some of the indicators have been reduced to simplify the computation of a PHA's assessment score. The total weights for each indicator are based on a ten-point scale, and the highest score a PHA can receive is 100. Indicators receive a higher weight primarily if they reflect a management aspect closely related to the key areas of the condition of PHA stock and delivery of services to PHA residents. On this basis, two indicators are given a weight of two: Vacancies and rents uncollected. Two indicators are given a weight of one and a half: Work orders and resident initiatives. The remaining indicators are given a weight of one: Modernization, inspection of units and systems, and financial management.

The weight of each indicator and component (shown in brackets [] for components only) is as follows:

Indicator #1, vacancy percentage and unit turnaround x2
Component #1, vacancy percentage and progress in reducing vacancies .... [x2]
Component #2, unit turnaround time .... [x1]
Indicator #2, modernization x1
Component #1, unexpended funds over three Federal fiscal years (FFYs) old ....[x1]
Component #2, timeliness of fund obligation ....[x2]
Component #3, adequacy of contract administration ....[x2]
Component #4, quality of the physical work ....[x3]
Component #5, adequacy of budget controls ....[x1]
Indicator #3, rents uncollected x1.5
Indicator #4, work orders x1.5
Component #1, emergency work orders completed in 24 hours or less ....[x1]
Component #2, average number of days for non-emergency work orders to be completed ....[x2]
Indicator #5, annual inspection of units and systems x1
Component #1, annual inspection of units ....[x1]
Component #2, annual inspection of systems ....[x1]
Indicator #6, financial management x1
Component #1, cash reserves ....[x2]
Component #2, annual energy/utility consumption ....[x1]
Indicator #7, resident involvement x1
Component #1, resident involvement .... [x1]
Indicator #8, security x1

Physical Condition and Neighborhood Environment

The overall PHMAP score of a PHA will be adjusted by adding weighted points that reflect the differences in the difficulty of managing developments that result from the physical condition and/or the neighborhood environment of a PHA's developments.

Section 502.(j)(1)(I) requires that (i) the Secretary shall administer the system of evaluating public housing agencies flexibly to ensure that such agencies are not penalized as a result of circumstances beyond their control; and (ii) reflect in the weights assigned to the various indicators the differences in the difficulty of managing individual projects that result from their physical

condition and neighborhood environment.

The Department believes that the current PHMAP regulation contains substantial provisions to ensure that PHAs are not penalized for conditions beyond their control:

1. A PHA may request a modification of any indicator and/or component to compensate for conditions beyond its control.

2. A PHA may request the exclusion of an indicator and/or component for the same reason.

3. Without requesting a modification, the current and proposed PHMAP regulation allows PHAs to modify the scoring calculations for certain indicators by exempting certain units.

4. There is a two-stage appeal process available if the PHA fails to find relief under paragraphs one, two, and three, above.

In view of these already substantial considerations which protect PHAs from being penalized for circumstances beyond their control, the Department is proposing to respond to item (ii), above (requiring the Department to reflect in the weights assigned to the various indicators the differences in the difficulty of managing individual developments that result from their physical condition and/or their neighborhood environment), in a way that will fully comply with the statutory language, but will not make PHMAP substantially more complicated, nor place inordinate administrative burdens on PHAs and HUD staff.

The Department is proposing that the legislative provision (requiring the Department to reflect in the weights assigned to the various indicators the differences in the difficulty of managing individual developments that result from their physical condition and/or their neighborhood environment) apply to the following three indicators only.

1. Indicator #1, vacancy percentage and unit turnaround;

2. Indicator #4, work orders; and

3. Indicator #5, annual inspection and condition of units and systems.

The definitions of physical condition and neighborhood environment are kept as simple as possible and meant to make it relatively easy for PHAs to document.

1. Physical condition: Refers to units located in developments over ten years old that require major capital investment in order to meet minimum HQS standards or local codes, whichever is applicable.

2. Neighborhood environment: Refers to units located within developments where the immediate surrounding neighborhood (that is a majority of the census tracts on all sides of the development) has at least 51% of families with incomes below the poverty rate as documented by the latest census data.

Any PHA with 5% or more of its units subject to either or both of the above conditions shall, if they so choose, be issued a weighted PHMAP score, based solely upon the certification of the PHA, in addition to the regular PHMAP score. The additional weight shall be calculated as follows:

Percent of Units Subject to Physical Condition and/or Neighborhood Environment:	Extra points
At least 5% but less than 10%	0.5
At least 10% but less than 20%	.6
At least 20% but less than 30%	.7
At least 30% but less than 40%	.8
At least 40% but less than 50%	.9
At least 50%	1.0

These extra points will be added to the score (grade) of the indicator(s) to which these conditions may apply. A PHA is required to certify on form HUD–50072, PHMAP Certification, the extent to which the conditions apply, and to which of the indicators the extra scoring points should be added. For example, a PHA certifying that (after removing from consideration all units previously exempted) 15% of its units are subject to the physical conditions and/or neighborhood environment as defined above, would receive an additional .6 of a point for the score for indicator #1. If a PHA receives an unweighted score of D (5 points) for this indicator, the weighted score would be 5.6 points. Indicator #1 has an overall weight of x2, therefore, the weighted score for the indicator would be 11.2, as opposed to the unweighted score of 10.

Developments that have received comprehensive modernization within the past ten years are not eligible to receive additional weight for the physical condition factor. A PHA that receives a grade of A under indicators #4 and #5 (without additional points) may not claim the additional weight for indicator #1 since the physical condition of its developments is not applicable. None of the weighted indicators may have a score that is more than its total weighted points, including the additional point, or fraction thereof, awarded for weighting.

PHAs would be expected to maintain supporting documentation to show how they arrived at the number and percentage of units out of their total inventory that are subject to additional weighting. If the basis were neighborhood environment, the PHA would have on file the appropriate maps showing the census tracts surrounding the development(s) in question with supporting census data showing the level of poverty. Units that fall into this category but which have already been removed from consideration for other reasons (permitted exemptions and modifications and/or exclusions) shall not be counted in this calculation. For example, a unit that has been removed from the adjusted vacancy calculation because it is undergoing modernization shall not also be counted as a unit subject to this provision. For the physical condition factor, a PHA would have to maintain documentation showing the age and condition of the units and the record of capital improvements, indicating that these particular units have not received comprehensive modernization. They would also have to document that in all cases, units that had been exempted for other reasons were not included in the calculation.

PHA Score and Status—§ 901.115

This section has been revised to state that a PHA shall not be designated as a high performer if it scores below a grade of C for any indicator.

A new provision, recommended by the Office of Management and Budget in the course of the review of this proposed rule in accordance with Executive Order 12866, would require each PHA to post a notice of its PHMAP score and status in appropriate conspicuous and accessible locations in its offices and in each of its developments within two weeks of receipt of the score and status. In addition, HUD would publish every PHA's score and status in the Federal Register.

State/Area Office Functions—§ 901.120

Section 901.125, *Regional Administrator functions,* has been eliminated from this proposed rule as a result of the reorganization of the Department and the redelegation of authority to State/Area Offices. Applicable functions have been included in this portion of the regulation.

This section will require a State/Area Office to notify a PHA of its PHMAP score and the grade of the RMC or AME (if any) assuming management functions at any of the PHA's developments, and will require a PHA to notify in writing, immediately upon receipt of the State/Area Office notification, the RMC or AME (if any) of the RMC/AME's grades.

PHA Right of Appeal—§ 901.125

Former Regional Administrator functions that are applicable have been included in this portion of the regulation.

Incentives—§ 901.130

All high- and standard-performing PHAs have been afforded substantial relief by the Department and this section of the regulation has been revised to reflect the available relief. This section also includes recognition of RMCs that receive a grade of A on each of the indicators for which they are assessed.

Memorandum of Agreement—§ 901.140

The scope of the Memorandum of Agreement (MOA) may vary depending upon the extent of the problems present in the PHA, and now provides for the inclusion of other relevant areas identified as problematic, i.e., areas other than deficient PHMAP indicators. The Department believes that the use of one document to track troubled and mod-troubled PHA progress is in the best interest of PHAs and the Department.

Upon designation of a large PHA (1250 or more units under management) as troubled, the State/Area Office shall make a referral to HUD Headquarters for appropriate recovery intervention and the execution of an MOA by the Assistant Secretary for Public and Indian Housing.

Improvement Plan—§ 901.145

The option of requiring RMCs or AMEs to develop an improvement plan is included in the regulation. As with a PHA, if an RMC or AME receives a D or E in any indicator, the State/Area Office may require an RMC or AME to develop an improvement plan. If an RMC or AME receives an F in any indicator, the State/Area Office shall require an RMC or AME to develop an improvement plan.

Resident Participation in Competitive Proposals and Resident Petitions, §§ 901.220 and 901.225

The statutory authority for the PHMAP is section 6(j) of the 1937 Act. Section 113 of HCDA 1992 amends section 6(j)(3)(A) of the 1937 Act (42 U.S.C. 1437d(j)(3)(A)), which deals with the actions that may be taken upon the occurrence of a substantial default by a PHA.

Section 113(b)(1) amends 1937 Act section 6(j)(3)(A)(i), which permits the Department to solicit competitive proposals from other PHAs and private housing management agents (which may be selected by existing residents) to manage the housing administered by a PHA in substantial default, by allowing residents the opportunity to participate in the selection process through administrative procedures established by the Department. These administrative procedures are being proposed in this rule.

This proposed rule would provide in § 901.220 that when a competitive proposal to manage the housing of a PHA in substantial default is solicited in a Request for Proposals (RFP), the PHA would be required to post a notice and a copy of the RFP on the premises of each housing development subject to new management under the RFP for the purposes of notifying affected residents. Residents would be required to notify HUD by the RFP's application due date of their interest in participating in the selection process. In order to participate, the total number of residents that notify HUD must equal at least five percent of the PHA's residents, or the notification of interest must be from an organization or organizations of residents whose membership must equal at least five percent of the PHA's residents. Because of the urgency that is appropriately present when the extraordinary measure of selecting new management for a PHA in substantial default must be taken, the Department has determined that this minimal five percent showing of resident concern is necessary to justify the additional selection procedures required by resident participation.

If the required number of interested residents notify HUD, a minimum of one resident may be invited to serve as an advisory member on the evaluation panel that will review the applications in accordance with applicable procurement procedures. Resident advisory member(s) are subject to all applicable confidentiality and disclosure restrictions.

Section 113(b)(5) allows the residents of a PHA designated as troubled to petition the Department to take any of the remedial actions listed under subparagraph 6(j)(3)(A) of the 1937 Act. The Department is required to respond to such petitions in a timely manner with a written description of the actions, if any, the Department plans to take, and, where applicable, explain why such actions differ from the course proposed by the residents. As with the procedure for permitting residents to participate in the selection of management agents, the proposed rule would require, at § 901.225, that the petition has the support of at least five percent of the troubled PHA's residents.

Substantial Default and Intervention Procedures, §§ 901.200—901.215

This proposed rule adds language that would require the Department to take action regarding troubled PHAs or AMEs that have not improved their management performance over a specified period of time. The current PHMAP regulation has a wide variety of options for dealing with troubled PHAs subsequent to a finding of substantial default. What the current regulation does not have is a built-in time frame that would require the Department to make a finding of substantial breach or default, or request a court-ordered receivership. Therefore, under § 901.200(c), the Department will be required to declare a troubled PHA or AME in substantial breach or default if a PHA does not show significant improvement (10 point increase) in its PHMAP score within one year. A PHA or AME will be notified of such action in accordance with § 901.205(c).

A PHA or AME may waive, in writing, receipt of explicit notice from HUD as to a finding of substantial default, and voluntarily consent to a determination of substantial default. The PHA or AME would concur on the existence of substantial default conditions which can be remedied by technical assistance. At that time, the Department would immediately proceed with interventions as provided in § 901.210, including the provision of technical assistance necessary to address identified deficiencies. In such a case, the PHA or AME shall provide the Department with written assurances that all deficiencies will be addressed by the PHA or AME.

The affect of this proposal would be that chronically troubled PHAs or AMEs would be subject to immediate intervention by the Department. Section 901.210(a) of the current PHMAP regulation gives a PHA an opportunity to initiate corrective action to resolve identified deficiencies. Section 901.210(c) of the current PHMAP rule requires a PHA to demonstrate (in no more than 30 days) that the Department's finding of substantial breach or default is incorrect. The burden of proof is placed upon the PHA. The rationale is that troubled PHAs have already had more than adequate time to implement corrective action, or will have at least one year from the time of initial troubled designation.

This approach essentially uses the regulation that has been in place for years. The only difference is that the Department would be required to impose the existing standard. The only new performance standard rests upon the Department, not the PHA or AME.

A new § 901.235, *Technical assistance,* has been added to address situations where a substantial default is likely to occur if deficiencies are not addressed, and to ensure that a PHA or AME that has just been removed from troubled status will not become troubled again within a two year period.

Request for Comments

The Department recognizes that PHMAP scores should not be interpreted as the sole determinant of housing agency performance. While PHMAP is an important yardstick to measure PHA performance, it should not be the sole driving force behind PHA actions. Sometimes a PHA should do the ''right'' thing and receive a lower PHMAP score. For example, a PHA decides to demolish nonviable units rather than to program these nonviable units for modernization in quest of a better PHMAP score. When a PHA makes the ''right'' decision, it should be commended, not punished. Therefore, the Department is particularly interested in receiving comments concerning ways in which PHAs can receive positive recognition within the context of this regulation for making the right decision.

APPENDIX 1.—SAMPLE WORKSHEET—INDICATOR #6, CASH AND OPERATING EXPENSES

[Analysis of available cash, examination of operating expenses/available cash]

PHA Name:	FYE
To estimate cash available at fiscal year end for routine operating expenditures.	
Current Assets	
1. Balance of Cash and Investment Accounts at fiscal year end. Do not include the balance of cash accounts that are restricted to a specific purpose and are, therefore, not available for routine operating expenditure purposes (e.g., modernization accounts, security deposit accounts, escrow accounts, homebuyer reserves, replacement reserves, etc.).	
(a) General Fund Account 1111.1	
(b) Petty Cash, Account 1117	
(c) Investments, Account 1162	
(d) Other (describe)	
2. Add Accounts Receivable and Advances that are due for the period covered and can be collected within the next 30 days.	
(a) Tenants/homebuyers	
(b) HUD Contributions receivable for Operating Subsidy	
(c) Interfund accounts receivable due from other ACCs	
(d) Other Receivables (describe)	
3. Total Current Assets (add items 1 and 2).	
Current Liabilities	
4. Liabilities payable within 30 days after fiscal period ends.	
(a) Vendors/contractors, Account 2111	
(b) Payroll deductions and contributions, Account 2117	
(c) Amounts due to HUD for subsidy adjustment, residual receipts, Account 2118	
(d) Accrued Expenses (e.g., utilities, payroll, PILOT)	
(c) Interfund accounts payable due to other ACCs	
(d) Other current obligations (describe)	
5. Total Current Liabilities (Add items 4(a) through 4(d)).	
6. Available Cash (Deficiency) (Line 3 Minus Line 5).	
7. Total Routine Expenses (Line 520, form HUD–52599).	
8. Cash Reserves divided by Total Actual Routine Expenses (Line 6 divided by Line 7).	

APPENDIX 2.—SAMPLE WORKSHEET—INDICATOR #6, ENERGY/UTILITY CONSUMPTION OPTION A

[Annual energy/utility consumption, as compared to the average of the three years' rolling base consumption]

PHA:	FYE
1. Total energy/utility cost in fiscal year for which adjustment is requested (form HUD–52722B, line 13, column 3):	$
2. Costs of estimated energy/utility consumption at average rate for appropriate PHA fiscal year (form HUD–52722B, line 17, column 3):	$
3. Costs of actual energy/utility consumption divided by costs of estimated energy/utility consumption (line 1 divided by line 2):	$
4. Subtract 1.00 from line 3 and multiply the remainder by 100 to calculate the percentage of increase or decrease. For example:	%
If line 3 equals .95, then .95 minus 1.00 equals $-.05 \times 100$ = a 5% decrease; or.	
If line 3 equals 1.15, then 1.15 minus 1.00 equals $.15 \times 100$ = a 15% increase.	

Source: Most recent form HUD–52722B, Adjustment for Utility Consumption and Rates.

SAMPLE WORKSHEET—INDICATOR #6, ENERGY CONSUMPTION OPTION B

[Energy audit and implementation of recommendations]

PHA:	FYE
Grade	Response
Grade A: The PHA has completed its energy audit and has implemented all of the recommendations determined to be cost effective.	
Grade C: The PHA has completed its energy audit and is in the process of implementing all of the recommendations.	
Grade F: The PHA has not completed its energy audit, or has not implemented all of the recommendations.	

Source: PHA's energy audit and/or maintenance plan.

APPENDIX 3.—PUBLIC HOUSING MANAGEMENT ASSESSMENT PROGRAM (PHMAP) CERTIFICATION

[Instructions: A PHA/RMC/AME's responses to this certification form must be the PHA/RMC/AME's actual data; e.g., prior to any adjustments for modifications and/or exclusion requests to the indicators. Round percentages to the nearest two decimal points.]

PHA/RMC/AME Name:
For FY Ending:
Submission Date:
Indicator 1: Vacancy rate and unit turnaround

	Units	Days		Rate
Actual vacancy total	/	/	/	%
Vacancy exemptions	/	/	/	
Adjusted vacancy total	/	/	/	%

Percent reduction of actual vacancies over prior three years (enter percent or N/A) ..... %

PHA/RMC/AME shall respond to the question, below, if it scored below a grade of C on the vacancy component

Average number of calendar days for vacant unit to be prepared for re-rental and for a new lease to take effect (unit turnaround) .....

Additional percentage points for the percent of units subject to physical condition and/or neighborhood environment (enter .5; .6; .7; .8; .9; or 1 or N/A) ..... %

Indicator 3: Rents uncollected

Rents billed ..... $

Rents collected ..... $

Rents uncollected ..... $

Balance of rents uncollected as a percentage of total rents to be collected ..... %

Indicator 4: Work orders

Percent of emergency items corrected/abated within 24 hours ..... %

Average number of calendar days for non-emergency work orders to be completed .....

Average number of days PHA/RMC/AME has reduced the time it takes to complete non-emergency work orders over the past three years (enter average number of days or N/A) .....

Additional percentage points for the percent of units subject to physical condition and/or neighborhood environment (enter .5; .6; .7; .8; .9; or 1 or N/A) ..... %

Indicator 5: Annual inspection of units and systems

Percent of units inspected annually using standards that were at least equivalent to HQS ..... %

Percent of units meeting HQS ..... %

PHA/RMC/AME completed all repairs where necessary for code compliance either during the inspection, issued work orders for the repairs, or referred the deficiency to the current year's or next year's modernization program (enter Yes or No) .....

Percent of buildings and sites, according to the maintenance plan, where major systems were inspected ..... %

Additional percentage points for the percent of units subject to physical condition and/or neighborhood environment (enter .5; .6; .7; .8; .9; or 1 or N/A) ..... %

Indicator 6: Financial management

PHA/RMC/AME has cash reserves of $3 million or more (enter Yes or No) ..... $

If the answer is Yes, proceed to indicator #7; if the answer is No, continue with the next question

Percent of cash reserves to total actual routine expenditures ..... %

PHA/RMC/AME shall respond to the questions, below, if it scored below a grade of C on the cash reserves component; however, PHA/RMC/AME with tenant-paid utilities in all their units will not be assessed on energy/utility consumption even if they score below a grade of C on the cash reserve component

PHA/RMC/AME has completed its energy audit and has implemented all of the recommendations that were cost effective (enter Yes or No) .....

If the answer is Yes, proceed to indicator #7; if the answer is No, continue with the next question

PHA/RMC/AME has completed its energy audit and is in the process of implementing all of the recommendations that were cost effective (enter Yes or No) .....

If the answer is Yes, proceed to indicator #7; if the answer is No, continue with the next question

PHA/RMC/AME has completed its energy audit (enter Yes or No) .....

If the answer is No, proceed to indicator #7

PHA/RMC/AME has completed its energy audit, but has not implemented all of the recommendations that were cost effective (enter Yes) .....

Indicator 7: Resident involvement (applies only to PHAs with 100 units or less)

PHA Board, by resolution, has adopted a Section 3 program (enter Yes or No) .....

PHA/RMC/AME staff monitors progress and issues reports concerning progress under the program (enter Yes or No) .....

At each family development site where a resident council exists, there has been a development-wide election of resident council board members/officers (enter Yes or No) .....

At each family development site where a resident council does not exist, the PHA/AME during the past year has encouraged development-wide elections of resident board members/officers (enter Yes or No or N/A) .....

PHA Board, by resolution, has adopted mechanisms to ensure that residents have ample opportunity for input into planning and goal setting for ongoing management issues, including capital improvement programs (enter Yes or No) .....

PHA Board has invited residents to participate in planning for capital improvement programs (enter Yes or No or N/A) .....

If the PHA/RMC/AME has any special resident initiative program(s), the percent of goals being met under the implementation plan for any and all programs (enter percent) ..... %

Indicator 8: Security

PHA/RMC/AME has a mechanism for tracking crime related problems (enter Yes or No) .....

PHA/RMC/AME can demonstrate a system for taking action with local police authorities to improve law enforcement, lease enforcement and crime prevention (enter Yes or No) .....

PHA Board, by resolution, has adopted policies that screen out public housing applicants with a history of criminal activity involving crimes to persons or property and/or other criminal acts that would adversely affect the health, safety or welfare of other residents (enter Yes or No) .....

PHA/RMC/AME has implemented procedures and can document that it appropriately screens out and denies admission to public housing applicants with a history of criminal activity involving crimes to persons or property and/or other criminal acts that would adversely affect the health, safety or welfare of other residents (enter Yes or No) .....

PHA Board, by resolution, has adopted policies that appropriately evict a public housing resident who engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents; engages in any drug-related criminal activity (as defined at section 6(l) of the 1937 Act [42 U.S.C. 1437d(l)]) on or off the PHA's property; or who the PHA has reasonable cause to believe abuses alcohol in such a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents (enter Yes or No) .....

PHA/RMC/AME has implemented procedures and can document that it appropriately evicts a public housing resident who engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents; engages in any drug-related criminal activity (as defined at section 6(l) of the 1937 Act [42 U.S.C. 1437d(l)]) on or off the PHA's property; or who the PHA has reasonable cause to believe abuses alcohol in such a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents (enter Yes or No) .....

If the PHA/RMC/AME has any special drug prevention program or crime reduction program funded by any HUD funds, the percent of goals being met under the implementation plan for any and all programs (enter percent) ..... %

V. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Regulatory Planning and Review

This proposed rule has been reviewed in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the proposed rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Regulatory Flexibility Act

The Secretary in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The rule establishes management assessment criteria for PHAs. HUD does not anticipate a significant economic impact on a substantial number of small entities, since the proposed rule establishes management assessment criteria which will be utilized by State/Area Offices for monitoring purposes and the provision of technical assistance to PHAs.

Federalism

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 will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed rule is intended to promote good management practices by including, in HUD's relationship with PHAs, continuing review of PHAs' compliance with already existing requirements. In addition, the proposed rule carries out, as unobtrusively as possible, a Federal statutory mandate. The proposed rule does not create any new significant requirements of its own. As a result, the proposed rule is not subject to review under the Order.

Family Impact

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, and, thus, is not subject to review under the Order. The proposed rule involves requirements for management assessment of PHAs. Any effect on the family would be indirect. To the extent families in public housing will be affected, the impact of the proposed rule's requirements is expected to be a positive one.

List of Subjects in 24 CFR Part 901

Administrative practice and procedures, Public housing, Reporting and recordkeeping requirements.

Accordingly, part 901 of title 24 of the Code of Federal Regulations is proposed to be revised as follows:

PART 901—PUBLIC HOUSING MANAGEMENT ASSESSMENT PROGRAM

Sec.

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901.230 Receivership.
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Authority: 42 U.S.C. 1437d(j) and 3535(d).

§ 901.1 Purpose and applicability.

(a) *Purpose.* This part establishes the Public Housing Management Assessment Program (PHMAP) to implement and augment section 6(j) of the 1937 Act (42 U.S.C. 1437d). PHMAP provides policies and procedures to identify public housing agency (PHA), resident management corporation (RMC), and alternative management entity (AME) management capabilities and deficiencies, recognize high-performing PHAs, designate criteria for defining troubled PHAs and PHAs that are troubled with respect to the program under section 14 (Public Housing Modernization Program), and improve

the management practices of troubled PHAs and mod-troubled PHAs.

(b) *Applicability.*

(1) The provisions of this part apply to PHAs and RMCs as noted in the sections of this part.

(2) When a PHA's management functions have been assumed by an AME:

(i) If the AME assumes only a portion of the PHA's management functions, the provisions of this part that apply to RMCs apply to the AME; or

(ii) If the AME assumes all, or substantially all, of the PHA's management functions, the provisions of this part that apply to PHAs apply to the AME.

(3) To ensure quality management results from a contract between an AME and a PHA, or between an AME and HUD, minimum performance criteria that relate to the PHMAP indicators, as applicable, should be included in such contract. Failure to meet the performance criteria would be a basis for termination of the contract. However, even in the absence of explicit contractual provisions, this part applies to AMEs in accordance with paragraph (b)(2) of this section.

§ 901.5 Definitions.

Actual vacancy rate is the vacancy rate calculated without any adjustments. It is calculated by dividing the total number of vacancy days in the fiscal year by the total number of unit days available in the fiscal year.

Adjusted vacancy rate is the vacancy rate calculated after excluding the vacancy days that are exempted for any of the eligible reasons. It is calculated by dividing the total number of adjusted vacancy days in the fiscal year by the total number of unit days available in the fiscal year.

Alternative management entity (AME) is a receiver, private contractor, private manager, or any other entity that is under contract with a PHA, or that is otherwise duly appointed or contracted (for example, by court order or agency action), to manage all or part of a PHA's operations. Depending upon the scope of PHA management functions assumed by the AME, in accordance with § 901.1(b)(2), the AME is treated as a PHA or an RMC for purposes of this part and, as appropriate, the terms PHA and RMC include AME.

Annual average is an average computed from data from a PHA's immediate past fiscal year for applicable indicators.

Approved demolition and/or disposition program exists when a PHA's application for demolition and/or disposition of low-rent public housing units has received written approval from HUD.

Approved funded, on-schedule annual modernization program includes any modernization program, funded out of the Comprehensive Grant Program (CGP), the Comprehensive Improvement Assistance Program (CIAP), the Vacancy Reduction Program (VRP), the Hope VI Program, or any other source, if a PHA is in conformance with its current implementation schedule as approved by the PHA Board of Commissioners and/or HUD.

Assistant Secretary means the Assistant Secretary for Public and Indian Housing of the Department.

Available unit is a dwelling unit (occupied or vacant) under a PHA's Annual Contributions Contract.

Average turnaround time is the annual average of the total number of turnaround days between the move-out date (whenever that occurred, including in some previous fiscal year) and the date a new lease takes effect. Each time an individual unit is re-occupied (turned around) during the fiscal year, the turnaround days for that unit shall be counted in the turnaround time. Average turnaround time is calculated by dividing the total turnaround days for all units re-occupied during the fiscal year by the total number of units re-occupied during the immediate past fiscal year.

Cash reserves is cash available at the end of an annual reporting period after all necessary expenses of a PHA/development have been paid or funds have been set-aside for such payment. The cash reserve computation takes into consideration both short-term accounts receivable and accounts payable.

Confirmatory review is an on-site review for the purposes of State/Area Office verification of the performance level of a PHA, the accuracy of the data certified to by a PHA, and the accuracy of the data derived from State/Area Office files.

Correct means to improve performance in an indicator to a level of grade ''C'' or better.

Current dwelling rent charged refers to the resident dwelling rent charges reflected in the monthly rent roll(s), and excludes retroactive rent charges, maintenance charges, excess utility charges, late charges, and any other charges not specifically identified as dwelling rent.

Cyclical work orders are work orders issued for the performance of routine maintenance work that is done in the same way at regular intervals. Examples of cyclical work include, but are not limited to, mopping hallways; picking up litter; cleaning a trash compactor; changing light bulbs in an entryway; etc. (Cyclical work orders should not be confused with preventive maintenance work orders.)

Deficiency means any grade below ''C'' in an indicator or component.

Emergency means physical work items that pose an immediate threat to life, health, safety, or property, or that are related to fire safety.

Emergency status abated means that an emergency work order is either fully completed, or the emergency condition is temporarily eliminated and no longer poses an immediate threat. If the work cannot be completed, emergency status can be abated by transferring the resident away from the emergency situation.

Emergency work order is a work order, from any source, that involves a circumstance that poses an immediate threat to life, health, safety or property, or that is related to fire safety.

HQS means Housing Quality Standards as set forth at 24 CFR 882.109 and amended by the Lead-Based Paint regulation at 24 CFR part 35.

Indicators means the major categories of PHA management functions that are examined under this program for assessment purposes. The list of individual indicators and the way they are graded is provided in §§ 901.10 through 901.45.

Local occupancy/housing codes are the minimum standards for human occupancy, if any, as defined by the local ordinance(s) of the jurisdiction in which the housing is located.

Major systems include, but are not limited to, structural/building envelopes which include roofing, walls, windows, hardware, flashings and caulking; mechanical systems which include heating, ventilation, air conditioning, plumbing, drainage, underground utilities (gas, electrical and water), and fuel storage tanks; electrical systems which include underground systems, above ground systems, elevators, emergency generators, door bells, electronic security devices, fire alarms, smoke alarms, outdoor lighting, and indoor lighting (halls, stairwells, public areas and exit signs); and transformers.

Memorandum of Agreement (MOA) is a binding contractual agreement between a PHA and HUD, required for each PHA designated as troubled and/or mod-troubled. The MOA sets forth target dates, strategies and incentives for improving management performance; and provides sanctions if performance does not result.

Non-emergency work order is any work order that covers a situation that is not an immediate threat to life,

health, safety, or property, or that is unrelated to fire safety.

Percentage of emergency work orders completed within 24 hours is the ratio of emergency work orders completed in 24 hours to the total number of emergency work orders. The formula for calculating this ratio is: total emergency work orders completed (or emergency status abated) in 24 hours or less, divided by the total number of emergency work orders.

Percentage of rents uncollected is the proportion of current dwelling rent that was billed during the assessment year, but not collected during the assessment year. The calculation is made as of the close of business on the last business day of the fiscal year. It is calculated by subtracting the total dwelling rent collected in the immediate past fiscal year from the total dwelling rent billed in the immediate past fiscal year to determine the amount of rents uncollected; and dividing the amount of rents uncollected by the total dwelling rent billed.

PHA means a public housing agency. As appropriate in accordance with § 901.1(b)(2), PHA also includes AME.

PHA-generated work order is any work order that is issued in response to a request from within the PHA administration.

Preventive maintenance program is a program under which certain maintenance procedures are systematically performed at regular intervals to prevent premature deterioration of buildings and systems. The program is developed and regularly updated by the PHA, and fully documents what work is to be performed and at what intervals. The program includes a system for tracking the performance of preventive maintenance work.

Preventive maintenance work order is any work done on a regularly scheduled basis in order to prevent deterioration or breakdowns in individual units or major systems.

Reduced actual vacancy rate in the previous three years is a comparison of the vacancy rate in the PHMAP assessment year (the immediate past fiscal year) to the vacancy rate in the first year of the previous three year period. It is calculated by subtracting the vacancy rate in the assessment year from the vacancy rate in the earlier year.

Reduced the average time it took to complete work orders over the previous three years is a comparison of the average time it took to complete work orders in the PHMAP assessment year (the immediate past fiscal year) to the average time it took to complete work orders in the first year of the previous three year period. It is calculated by subtracting the average time it took to complete work orders in the PHMAP assessment year from the average time it took to complete work orders in the earlier year.

Rents uncollected means unpaid resident dwelling rent for residents in possession.

Resident-generated work order is a work order issued by a PHA in response to a request from a lease holder or family member of a lease holder.

Resident management corporation (RMC) means the entity that proposes to enter into, or that enters into, a management contract with a PHA in accordance with 24 CFR 964.120. As appropriate in accordance with § 901.1(b)(2), RMC also includes AME.

Routine operating expenses are all expenses which are normal, recurring fiscal year expenditures. Routine expenses exclude those expenditures that are not normal fiscal year expenditures and those that clearly represent work of such a substantial nature that the expense is clearly not a routine occurrence.

Standards equivalent to HQS are housing/occupancy inspection standards that are equal to HUD's Section 8 HQS.

Substantial default means a PHA is determined by the Department to be in violation of statutory, regulatory or contractual provisions or requirements, whether or not these violations would constitute a substantial default or a substantial breach under explicit provisions of the relevant Annual Contributions Contract or a Memorandum of Agreement.

Turnaround days are the days between the last move-out and the date a new lease takes effect, including any turnaround days in prior fiscal years.

Vacancy day is a day when a unit is not under lease by an eligible low-income resident, unless the vacancy day is exempted for an eligible reason.

Vacant unit is a dwelling unit that is not under lease to an eligible family. Units under lease for police substations, social service providers, etc., are treated the same as units under lease to eligible families.

Vacant unit turnaround work order is a work order issued that directs a vacant unit to be made ready to lease to a new resident and reflects all work items to prepare the unit for occupancy.

Vacant unit undergoing modernization is a vacant unit in an otherwise viable development, as defined in 24 CFR 970.6, when the development is undergoing modernization that includes work that is necessary to reoccupy the vacant unit, and in which either: The vacant unit is under construction (i.e., the construction contract has been awarded or force account work has started); or the treatment of the vacant unit is included in a HUD-approved modernization budget (e.g., an approved Annual Statement for the Comprehensive Grant Program (CGP) or Comprehensive Improvement Assistance Program (CIAP) budget), but the time period for placing the vacant units under construction has not yet expired. The PHA must place the vacant units under construction within two Federal fiscal years (FFYs) after the FFY in which the modernization funds are approved. In addition, the following apply when computing time periods for a vacant unit undergoing modernization:

(1) If a unit is vacant prior to being included in the construction budget of an approved funded on-schedule annual modernization plan, those vacancy days that had accumulated prior to the unit being included in the construction budget of an annual modernization plan must be included as non-exempted vacancy days in the calculation.

(2) The calculation of turnaround time for newly modernized units starts when the unit is turned over to the PHA from the contractor and ends when the lease is effective for the new or returning resident. Thus, the total turnaround time would be the sum of the pre-modernization vacancy time, and the post-modernization vacancy time.

(3) Unit-by-unit documentation, showing when a vacant unit was included in the construction budget of a modernization plan, when it was released to the PHA by the contractor, and when a new lease is effective for the new or returning resident, must be maintained by the PHA.

(4) Units remaining vacant more than two FFYs after the FFY in which the modernization funds are approved, may no longer be exempted from the calculation of the adjusted vacancy rate if the construction contract has not been let. These units may be exempted again, but only after a contract is let.

Work order is a directive, containing one or more tasks issued to a PHA employee or contractor to perform one or more tasks on PHA property. This directive describes the location and the type of work to be performed; the date and time of receipt; date and time issued to the person or entity performing the work; the date and time the work is satisfactorily completed; the parts used to complete the repairs and the cost of the parts; whether the damage was caused by the resident; and the charges to the resident for resident-

caused damage. The work order is entered into a log which indicates at all times the status of all work orders as to type (emergency, routine, etc.), when issued, and when completed.

Work order completed during the immediate past fiscal year is any work order that is completed during the PHA's fiscal year regardless of when it may have been received.

Work order deferred for modernization is any work order that is combined with similar work orders and completed within the current PHMAP assessment year, or will be completed in the following year, under the PHA's modernization program or other PHA capital improvements program.

§ 901.10 Indicator #1, vacancy rate and unit turnaround time.

This indicator examines the vacancy rate, a PHA's progress in reducing vacancies, and unit turnaround time. This indicator has a weight of x2.

(a) For the calculation of the adjusted vacancy rate and turnaround time, the vacancy days for units in the following categories shall be exempted:

(1) Vacant unit undergoing modernization.

(2) Vacant units in an approved demolition or disposition program (not applicable to vacant unit turnaround).

(3) Vacant units that are documented to be uninhabitable for reasons beyond the PHA's control:

(i) Due to high/unsafe levels of hazardous/toxic material (e.g., lead-based paint or asbestos);

(ii) By order of the local health department or directive of the Environmental Protection Agency, where the conditions causing the order are beyond the control of the PHA; and

(iii) That are structurally unsound (e.g., buildings damaged by shrinking/swelling subsoil or similar situations, or as a result of natural disasters).

(4) Vacant units in which resident property has been abandoned, but only if State law requires the property to be left in the unit for some period of time, and only for the period stated in the law.

(5) Vacant units that have sustained casualty damage, but only until the insurance claim is adjusted, i.e., funds to repair the unit are received.

(6) Units that are used for non-dwelling purposes and dwelling units that are occupied by employees of the PHA and units that are used for resident services.

(7) Vacant units required to remain vacant because of fire/police investigations, coroner's seal, or court order.

(8) Units kept vacant because of code violations caused for reasons beyond the control of the PHA, rather than as a result of management and/or maintenance failures by the PHA.

(9) Units vacant for circumstances and actions beyond the PHA's control that prevent the PHA from being able to occupy, sell, demolish, rehabilitate, reconstruct, consolidate, or modernize vacant units. Such circumstances and actions may include:

(i) Litigation, such as a court order or settlement agreement that is legally enforceable. For example, units that are being held vacant as part of a court-ordered or HUD-approved desegregation effort would be exempted.

(ii) Federal or, when not preempted by Federal requirements, State law of general applicability or their implementing regulations. This category does not include units vacant only because they do not meet minimum standards established, for example, in housing and building codes.

(iii) Changing market conditions. For example, small PHAs that are located in areas experiencing population loss or economic dislocations may face a lack of demand in the foreseeable future, even after aggressive marketing and outreach measures by the PHA have been undertaken. Documentation of marketing efforts must be maintained by the PHA.

(iv) Natural disasters.

(v) Insufficient funding for otherwise approvable applications made for CIAP funds (only PHAs with less than 250 units are eligible to apply and compete for CIAP funds). This definition will cease to be used if CIAP is replaced by a formula grant.

(vi) Pending resolution of insurance claims or settlements. The period between a casualty loss and the receipt of funds from an insurer to cover the loss in whole or in part.

(b) *Component* #1, *vacancy percentage and progress in reducing vacancies.* A PHA may choose whether to use actual or adjusted vacancy rate. This component has a weight of x2.

(1) *Grade A:* The PHA is in one of the following categories:

(i) An actual vacancy rate of 3% or less; or

(ii) An adjusted vacancy rate of 2% or less.

(2) *Grade B:* The PHA is in one of the following categories:

(i) An actual vacancy rate of greater than 3% and less than or equal to 5%; or

(ii) An adjusted vacancy rate of greater than 2%, but less than or equal to 3%.

(3) *Grade C:* The PHA is in one of the following categories:

(i) An actual vacancy rate of greater than 5% and less than or equal to 7%; or

(ii) An adjusted vacancy rate of greater than 3% and less than or equal to 4%; or

(iii) The PHA has reduced its actual vacancy rate by at least 15 percentage points over the past three years and has an adjusted vacancy rate of greater than 4% and less than or equal to 5%.

(4) *Grade D:* The PHA is in one of the following categories:

(i) An actual vacancy rate of greater than 7% and less than or equal to 9%;

(ii) An adjusted vacancy rate of greater than 4% and less than or equal to 5%; or

(iii) The PHA has reduced its actual vacancy rate by at least 10 percentage points over the past three years and has an adjusted vacancy rate of greater than 5% and less than or equal to 6%.

(5) *Grade E:* The PHA is in one of the following categories:

(i) An actual vacancy rate of greater than 9% and less than or equal to 10%; or

(ii) An adjusted annual vacancy rate of greater than 5% and less than or equal to 6%; or

(iii) The PHA has reduced its actual vacancy rate by at least five percentage points over the past three years and has an adjusted vacancy rate of greater than 6% and less than or equal to 7%.

(6) *Grade F:* The PHA is in one of the following categories:

(i) An actual vacancy rate of greater than 10%; or

(ii) An adjusted annual vacancy rate of greater than 6%.

(c) *Component #2, unit turnaround time.* This component is to be completed only by PHAs scoring below a grade C on component #1. This component has a weight of x1.

(1) *Grade A:* The average number of calendar days between the time when a unit is vacated and a new lease takes effect for units re-occupied during the PHA's immediate past fiscal year, is less than or equal to 20 calendar days.

(2) *Grade B:* The average number of calendar days between the time when a unit is vacated and a new lease takes effect for units re-occupied during the PHA's immediate past fiscal year, is greater than 20 calendar days and less than or equal to 25 calendar days.

(3) *Grade C:* The average number of calendar days between the time when a unit is vacated and a new lease takes effect for units re-occupied during the PHA's immediate past fiscal year, is greater than 25 calendar days and less than or equal to 30 calendar days.

(4) *Grade D:* The average number of calendar days between the time when a

unit is vacated and a new lease takes effect for units re-occupied during the PHA's immediate past fiscal year, is greater than 30 calendar days and less than or equal to 40 calendar days.

(5) *Grade E:* The average number of calendar days between the time when a unit is vacated and a new lease takes effect for units re-occupied during the PHA's immediate past fiscal year, is greater than 40 calendar days and less than or equal to 50 calendar days.

(6) *Grade F:* The average number of calendar days between the time when a unit is vacated and a new lease takes effect for units re-occupied during the PHA's immediate past fiscal year, is greater than 50 calendar days.

§ 901.15 Indicator #2, modernization.

This indicator is automatically excluded if a PHA does not have a modernization program. This indicator examines the amount of unexpended funds over three years old, the timeliness of fund obligation, the adequacy of contract administration, the quality of the physical work, and the adequacy of budget controls. It applies to both the Comprehensive Grant Program (CGP) and the Comprehensive Improvement Assistance Program (CIAP). This indicator has a weight of x1.

(a) *Component #1, unexpended funds over three Federal Fiscal Years (FFYs) Old.* This component has a weight of x1.

(1) *Grade A:* The PHA has no unexpended funds over three FFYs old, or is able to demonstrate one of the following:

(i) The unexpended funds are leftover funds and will be recaptured after audit; or

(ii) The HUD-approved original implementation schedule allows longer than three FFYs to expend all funds; or

(iii) The PHA has self-executed a time extension within 30 calendar days after the expenditure deadline and the extension is based on valid reasons outside of the PHA's control, such as litigation, material shortages, or other institutional delay.

(2) *Grade F:* The PHA has unexpended funds over three FFYs old and is unable to demonstrate any of the above three conditions; or the PHA requests HUD approval of a time extension based on reasons within the PHA's control.

(b) *Component #2, timeliness of fund obligation.* This component has a weight of x2.

(1) *Grade A:* The PHA has no unobligated funds over two FFYs old or is able to demonstrate one of the following:

(i) The HUD-approved original implementation schedule allows longer than two FFYs to obligate all funds; or

(ii) The PHA has self-executed a time extension within 30 calendar days after the obligation deadline and the extension is based on valid reasons outside of the PHA's control, such as litigation, material shortages, or other institutional delay.

(2) *Grade F:* The PHA has unobligated funds over two FFYs old and is unable to demonstrate any of the above two conditions; or the PHA requests HUD approval of a time extension based on reasons within the PHA's control.

(c) *Component #3, adequacy of contract administration.* This component has a weight of x1.5.

(1) *Grade A:* Based on HUD's latest on-site inspection and/or audit, there were no significant findings related to contract administration or the PHA has corrected all such findings.

(2) *Grade C:* Based on HUD's latest on-site inspection and/or audit, there were significant findings related to contract administration and the PHA is in the process of correcting all such findings.

(3) *Grade F:* Based on HUD's latest on-site inspection and/or audit, there were significant findings related to contract administration and the PHA has failed to initiate corrective actions for all such findings or those actions which have been initiated have not resulted in progress toward remedying all of the findings.

(d) *Component #4, quality of the physical work.* This component has a weight of x3.

(1) *Grade A:* Based on HUD's latest on-site inspection, there were no significant findings related to the quality of the physical work or the PHA has corrected all such findings.

(2) *Grade C:* Based on HUD's latest on-site inspection, there were significant monitoring findings related to the quality of the physical work and the PHA is in the process of correcting all such findings.

(3) *Grade F:* Based on HUD's latest on-site inspection, there were significant monitoring findings related to the quality of the physical work and the PHA has failed to initiate corrective actions for all such findings or those actions which have been initiated have not resulted in progress toward remedying all of the findings.

(e) *Component #5, adequacy of budget controls.* This component has a weight of x1.

(1) *Grade A:* The *CGP PHA* has expended modernization funds only on work items in HUD-approved CGP Annual Statements/Five-Year Action Plan or has obtained prior HUD approval for required budget revisions. The *CIAP PHA* has expended modernization funds only on work items in HUD-approved CIAP budgets, or within the HUD-established threshold for CIAP budget revisions, or has obtained prior HUD approval for required budget revisions.

(2) *Grade F:* The *CGP PHA* has expended modernization funds on work items that were not in HUD-approved CGP Annual Statements/Five-Year Action Plan and did not obtain prior HUD approval for required budget revisions. The *CIAP PHA* has expended modernization funds on work items that were not in HUD-approved CIAP budgets, or within the HUD-established threshold for CIAP budget revisions, and did not obtain prior HUD approval for required budget revisions.

§ 901.20 Indicator #3, rents uncollected.

This indicator examines the PHA's ability to collect rent by measuring the percentage of dwelling rent it failed to collect during its immediate past fiscal year. This indicator has a weight of x1.5.

(a) *Grade A:* Percent of rents uncollected in the immediate past fiscal year is less than or equal to 2% of total rents billed.

(b) *Grade B:* The percent of rents uncollected in the immediate past fiscal year is greater than 2% and less than or equal to 4% of total rents billed.

(c) *Grade C:* The percent of rents uncollected in the immediate past fiscal year is greater than 4% and less than or equal to 6% of total rents billed.

(d) *Grade D:* The percent of rents uncollected in the immediate past fiscal year is greater than 6% and less than or equal to 8% of total rents billed.

(e) *Grade E:* The percent of rents uncollected in the immediate past fiscal year is greater than 8% and less than or equal to 10% of total rents billed.

(f) *Grade F:* The percent of rents uncollected in the immediate past fiscal year is greater than 10% of total rents billed.

§ 901.25 Indicator #4, work orders.

This indicator examines the average number of days it takes for a work order to be completed, and any progress a PHA has made during the preceding three years to reduce the period of time required to complete maintenance work orders. This indicator has a weight of x1.5.

(a) *Component #1, emergency work orders completed within 24 hours or less.* This component has a weight of x1.

(1) *Grade A:* At least 99% of emergency work orders were completed or the emergency was abated within 24

hours or less during the PHA's immediate past fiscal year.

(2) *Grade B:* At least 98% of emergency work orders were completed or the emergency was abated within 24 hours or less during the PHA's immediate past fiscal year.

(3) *Grade C:* At least 97% of emergency work orders were completed or the emergency was abated within 24 hours or less during the PHA's immediate past fiscal year.

(4) *Grade D:* At least 96% of emergency work orders were completed or the emergency was abated within 24 hours or less during the PHA's immediate past fiscal year.

(5) *Grade E:* At least 95% of emergency work orders were completed or the emergency was abated within 24 hours or less during the PHA's immediate past fiscal year.

(6) *Grade F:* Less than 95% of emergency work orders were completed or the emergency was abated within 24 hours or less during the PHA's immediate past fiscal year.

(b) *Component* #2, average number of days for non-emergency work orders to be completed. All work orders should be tracked, except non-emergency work orders exempted for modernization, issued to prepare a vacant unit for re-rental, or issued for the performance of cyclical maintenance. This component has a weight of x2.

(1) *Grade A:* All non-emergency work orders are completed within an average of 25 calendar days.

(2) *Grade B:* All non-emergency work orders are completed within an average of greater than 25 calendar days and less than or equal to 30 calendar days.

(3) *Grade C:* The PHA is in one of the following categories:

(i) All non-emergency work orders are completed within an average of greater than 30 calendar days and less than or equal to 40 calendar days; or

(ii) The PHA has reduced the average time it takes to complete non-emergency work orders over the past three years by at least 30 days.

(4) *Grade D:* The PHA is in one of the following categories:

(i) All non-emergency work orders are completed within an average of greater than 40 calendar days and less than or equal to 50 calendar days; or

(ii) The PHA has reduced the average time it takes to complete non-emergency work orders over the past three years by at least 20 days.

(5) *Grade E:* The PHA is in one of the following categories:

(i) All non-emergency work orders are completed within an average of greater than 50 calendar days and less than or equal to 60 calendar days; or

(ii) The PHA has reduced the average time it takes to complete non-emergency work orders over the past three years by at least 10 days.

(6) *Grade F:* All non-emergency work orders are completed within an average of greater than 60 calendar days.

§ 901.30 Indicator #5, annual inspection of units and systems.

This indicator examines the percentage of units that a PHA inspects on an annual basis in order to determine short-term maintenance needs and long-term modernization needs. This indicator has a weight of x1.

(a) Units in the following categories are exempted and not included in the calculation of the total number of units, and the number and percentage of units inspected. Systems that are a part of individual dwelling units that are exempted, or a part of a building where *all* of the dwelling units in the building are exempted, are also exempted from the calculation of this indicator:

(1) Occupied units where the PHA has made two documented attempts to inspect, but only if the PHA can document that appropriate legal action (up to and including eviction of the legal or illegal occupant(s)), has been taken under provisions of the lease to ensure that the unit can be subsequently inspected.

(2) Vacant unit undergoing modernization.

(3) Vacant units in an approved demolition or disposition program.

(4) Vacant units that are documented to be uninhabitable:

(i) Due to high/unsafe levels of hazardous/toxic material (e.g., lead-based paint or asbestos);

(ii) By order of the local health department or directive of the Environmental Protection Agency, where the conditions causing the order are beyond the control of the PHA; and

(iii) That are structurally unsound (e.g., buildings damaged by shrinking/swelling subsoil or similar situations).

(5) Units vacant for the full immediate past fiscal year that have been exempted under indicator #1, at § 901.10, for any of the reasons for which exemptions are permitted under that indicator (except those units that are used for non-dwelling purposes or that are occupied by employees of the PHA and units that are used for resident services).

(b) *Component* #1, *annual inspection of units.* This component refers to an inspection using either the local housing/occupancy code, or HUD HQS if there is no local code or the local code is less stringent that HQS. This component has a weight of x1.

(1) *Grade A:* The PHA inspected 100% of its units and, if repairs were necessary for code compliance, either completed the repairs during the inspection; issued work orders for the repairs; or referred the deficiency to the current year's or next year's modernization program.

(2) *Grade B:* The PHA inspected less than 100% but at least 97% of its units and, if repairs were necessary for code compliance, either completed the repairs during the inspection; issued work orders for the repairs; or referred the deficiency to the current year's or next year's modernization program.

(3) *Grade C:* The PHA inspected less than 97% but at least 95% of its units and, if repairs were necessary for code compliance, either completed the repairs during the inspection; issued work orders for the repairs; or referred the deficiency to the current year's or next year's modernization program.

(4) *Grade D:* The PHA inspected less than 95% but at least 93% of its units and, if repairs were necessary for code compliance, either completed the repairs during the inspection; issued work orders for the repairs; or referred the deficiency to the current year's or next year's modernization program.

(5) *Grade E:* The PHA inspected less than 93% but at least 90% of its units and, if repairs were necessary for code compliance, either completed the repairs during the inspection; issued work orders for the repairs; or referred the deficiency to the current year's or next year's modernization program.

(6) *Grade F:* The PHA has failed to inspect at least 90% of its units; or failed to correct deficiencies during the inspection or issue work orders for the repairs; or failed to refer deficiencies to the current year's or next year's modernization plan.

(c) *Component* #2, *annual inspection of systems.* This component examines the inspection of buildings and sites according to the PHA's maintenance plan, including performing the required maintenance on structures and systems in accordance with manufacturer's specifications and established local/PHA standards, or issuing work orders for future maintenance/repairs, or including identified deficiencies in the Comprehensive Modernization Plan. This component has a weight of x1.

(1) *Grade A:* At 100% of its buildings and sites, according to its maintenance plan, the PHA inspected all major systems.

(2) *Grade B:* At a minimum of 90% but less than 100% of its buildings and sites, according to its maintenance plan, the PHA inspected all major systems.

(3) *Grade C:* At a minimum of 80% but less than 90% of its buildings and

sites, according to its maintenance plan, the PHA inspected all major systems.

(4) *Grade D:* At a minimum of 70% but less than 80% of its buildings and sites, according to its maintenance plan, the PHA inspected all major systems.

(5) *Grade E:* At least 60% but less than 70% of its buildings and sites, according to its maintenance plan, the PHA inspected all major systems.

(6) *Grade F:* The PHA failed to inspect at lease 60% of its buildings and sites, all major systems, as defined herein, and perform the required maintenance on these systems in accordance with manufacturers specifications and established local/PHA standards, or issue work orders for future maintenance/repairs, or include identified deficiencies in the Comprehensive Modernization Plan.

§ 901.35 Indicator #6, financial management.

This indicator examines the amount of cash reserves and, for PHAs scoring below a grade C on cash reserves, energy/utility consumption. This indicator has a weight of x1.

(a) *Component* #1, cash reserves. This component has a weight of x2.

(1) *Grade A:* Cash reserves are greater than or equal to 15% of total actual routine expenditures, or the PHA has cash reserves of $3 million or more.

(2) *Grade B:* Cash reserves are greater than or equal to 12.5%, but less than 15% of total actual routine expenditures.

(3) *Grade C:* Cash reserves are greater than or equal to 10%, but less than 12.5% of total actual routine expenditures.

(4) *Grade D:* Cash reserves are greater than or equal to 7.5%, but less than 10% of total actual routine expenditures.

(5) *Grade E:* Cash reserves are greater than or equal to 5%, but less than 7.5% of total actual routine expenditures.

(6) *Grade F:* Cash reserves are less than 5% of total actual routine expenditures.

(b) *Component* #2, *energy/utility consumption.* Either option A or option B of this component is to be completed only by PHAs that score below a grade C on component #1. Regardless of a PHA's score on component #1, it will not be scored on component #2 if all its units have tenant paid utilities. Annual energy/utility consumption includes water and sewage usage. This component has a weight of x1.

(1) *Option A, Annual Energy/Utility Consumption.*—(i) *Grade A:* Annual energy/utility consumption, as compared to the average of the three years' rolling base consumption, has not increased.

(ii) *Grade B:* Annual energy/utility consumption, as compared to the average of the three years' rolling base consumption, has not increased by more than 3%.

(iii) *Grade C:* Annual energy/utility consumption, as compared to the average of the three years' rolling base consumption, has increased by more than 3% and less than or equal to 5%.

(iv) *Grade D:* Annual energy/utility consumption, as compared to the average of the three years' rolling base consumption, has increased by more than 5% and less than or equal to 7%.

(v) *Grade E:* Annual energy/utility consumption, as compared to the average of the three years' rolling base consumption, has increased by more than 7% and less than or equal to 9%.

(vi) *Grade F:* Annual energy/utility consumption, as compared to the average of the three years' rolling base consumption, has increased by more than 9%.

(2) *Component* #2, *option B, energy consumption.*—(i) *Grade A:* The PHA has completed its energy audit and has implemented all of the recommendations that were cost effective.

(ii) *Grade C:* The PHA has completed its energy audit and is in the process of implementing all of the recommendations that were cost effective.

(iii) *Grade F:* The PHA has not completed its energy audit, or has not implemented all of the recommendations that were cost effective.

§ 901.40 Indicator #7, resident involvement.

This indicator examines the PHA's efforts to encourage partnerships with residents and the local community that help improve management operations at the PHA; to encourage programs that develop self-sufficiency, individual responsibility and community involvement among residents; and, if applicable, PHA performance under any special HUD grant(s). PHAs with 100 units or less will not be assessed under this indicator. This indicator has a weight of x1.

(a) *Grade A:* The PHA meets each of the following criteria:

(1) The PHA Board, by resolution, has adopted a Section 3 program and the PHA staff monitors progress under the program and issues reports concerning progress under the program.

(2) The PHA has documentation that at each PHA family development site where a resident council exists, there has been a development-wide election of resident council board members and/or officers, and where no resident council exists, the PHA has encouraged the formation of such a council.

(3) The PHA Board has, through resolution, adopted mechanisms to ensure that residents have ample opportunity for input into planning and goal setting for ongoing management issues, as well as for capital improvements programs such as the Comprehensive Grant Program and the Comprehensive Improvement Assistance Program.

(4) If the PHA has any special resident initiative program, such as a Technical Assistance Grant (TAG), the Tenant Opportunity Program (TOP), Family Investment Center (FIC), Youth Sports (YS), Youth Apprenticeship Program (YAP), or Family Self-Sufficiency (FSS), the PHA can document that it is meeting at least 90% of its goals under the implementation plan for any and all of these programs.

(b) *Grade C:* The PHA meets each of the following criteria:

(1) The PHA Board, by resolution, has adopted a Section 3 program.

(2) At each PHA family development site where a resident council does not exist, the PHA during the assessment year has encouraged development-wide elections of resident council board members and/or officers.

(3) The PHA Board has invited residents to participate in planning for capital improvements.

(4) If the PHA has any special resident initiative program, such as TAG, TOP, FIC, YS, YAP, or FSS, the PHA can document that it is meeting at least 60% of its goals under the implementation plan for any and all of these programs.

(c) *Grade F:* The PHA fails to meet any one of the following criteria:

(1) The PHA Board, by resolution, has adopted a Section 3 program.

(2) At each PHA family development site where a resident council does not exist, the PHA during the assessment year has encouraged development-wide elections of resident council board members and/or officers.

(3) The PHA Board has invited residents to participate in planning for capital improvements.

(4) If the PHA has any special resident initiative program, such as TAG, TOP, FIC, YS, YAP, or FSS, the PHA can document that it is meeting at least 60% of its goals under the implementation plan for any and all of these programs.

§ 901.45 Indicator #8, security.

This indicator evaluates the PHAs performance in tracking crime-related problems in their developments, cooperating with local law enforcement and local courts, the adoption and

implementation of tough applicant screening and resident eviction policies and procedures, and, as applicable, PHA performance under any special HUD grant(s). PHAs with 100 units or less will not be assessed under this indicator. This indicator has a weight of x1.

(a) *Grade A:* The PHA meets the following criteria:

(1) The PHA has a mechanism (such as the logging of serious incidents in its various developments) for tracking crime related problems and can demonstrate a system for taking action with local police authorities to improve law enforcement, lease enforcement and crime prevention.

(2) The PHA Board, by resolution, has adopted policies and the PHA has implemented procedures and can document that it appropriately screens out and denies admission to a public housing applicant who:

(i) Has a recent history of criminal activity involving crimes to persons or property and/or other criminal acts that would adversely affect the health, safety or welfare of other residents;

(ii) Was evicted, because of drug-related criminal activity, from housing assisted under the U.S. Housing Act of 1937 within three years of the projected date of admission, unless the applicant has successfully completed, since the eviction, a rehabilitation program approved by the public housing agency;

(iii) The PHA determines is illegally using a controlled substance; or

(iv) The PHA has reasonable cause to believe abuses alcohol in a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(3) The PHA Board, by resolution, has adopted policies and the PHA has implemented procedures and can document that it appropriately evicts a public housing resident who:

(i) Engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents;

(ii) Engages in any drug-related criminal activity (as defined at section 6(l) of the 1937 Act (42 U.S.C. 1437d(l)) on or off the PHA's property; or

(iii) The PHA has reasonable cause to believe abuses alcohol in such a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(4) If the PHA has any special drug prevention program or crime reduction program funded by any HUD funds, the PHA can document that it is meeting at least 90% of its goals under the implementation plan for any and all of these programs.

(b) *Grade C:* The PHA meets the following criteria:

(1) The PHA can demonstrate a system for taking action with local police authorities to improve law enforcement, lease enforcement and crime prevention.

(2) The PHA Board, by resolution, has adopted policies but cannot document results in appropriately screening out and denying admission to a public housing applicant who:

(i) Has a recent history of criminal activity involving crimes to persons or property and/or other criminal acts that would adversely affect the health, safety or welfare of other residents;

(ii) Was evicted, because of drug-related criminal activity, from housing assisted under the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) within three years of the projected date of admission, unless the applicant has successfully completed, since the eviction, a rehabilitation program approved by the public housing agency;

(iii) The PHA determines is illegally using a controlled substance; or

(iv) The PHA has reasonable cause to believe abuses alcohol in a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(3) The PHA Board, by resolution, has adopted policies but cannot document results in appropriately evicting a public housing resident who:

(i) Engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents;

(ii) Engages in any drug-related criminal activity (as defined at section 6(l) of the 1937 Act (42 U.S.C. 1437d(l)) on or off the PHA's property; or

(iii) The PHA has reasonable cause to believe abuses alcohol in a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(4) If the PHA has any special drug prevention program or crime reduction program funded by any HUD funds, the PHA can document that it is meeting at least 60% of its goals under the implementation plan for any and all of these programs.

(c) *Grade F:* The PHA meets any one the following criteria:

(1) The PHA is not cooperating with local police authorities in an effort to provide safe and secure environments in its public housing developments.

(2) The PHA has not adopted policies or procedures that result in screening out and denying admission to a public housing applicant who:

(i) Has a recent history of criminal activity involving crimes to persons or property and/or other criminal acts that would adversely affect the health, safety or welfare of other residents;

(ii) Was evicted, because of drug-related criminal activity, from housing assisted under the U.S. Housing Act of 1937 within three years of the projected date of admission, unless the applicant has successfully completed, since the eviction, a rehabilitation program approved by the public housing agency;

(iii) The PHA determines is illegally using a controlled substance; or

(iv) The PHA has reasonable cause to believe abuses alcohol in a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(3) The PHA has not adopted policies or procedures that document results in the eviction of a public housing resident who:

(i) Engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents;

(ii) Engages in any drug-related criminal activity (as defined in section 6(l) of the 1937 Act (42 U.S.C. 1437d(l))) on or off the PHA's property; or

(iii) The PHA has reasonable cause to believe abuses alcohol in a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(4) If the PHA has any special drug prevention program or crime reduction program funded by any HUD funds, the PHA does not have a system for documenting or cannot document that it is meeting 60% or more of its goals under the implementation plan for any and all of these programs.

§ 901.100 Data collection.

(a) Information on some of the indicators will be derived by the State/Area Office from existing reporting and data forms.

(b) A PHA shall provide certification as to data on indicators not collected according to paragraph (a) of this section, by submitting a certified questionnaire within 45 calendar days after the end of the fiscal year covered by the certification:

(1) The certification shall be approved by PHA Board resolution, and signed and attested to by the Executive Director.

(2) PHAs shall maintain documentation for three years verifying all certified indicators for HUD on-site review.

(3) A PHA may include in its certification, rather than through an exclusion or modification request, any information bearing on the accuracy or completeness of the data being used by

HUD in grading an indicator. HUD will consider this assertion in grading the affected indicator.

(4) If a PHA does not submit its certification, or submits its certification late, appropriate sanctions may be imposed, including a presumptive rating of failure in all of the PHMAP indicators, which may result in troubled or mod-troubled designations.

(5) A PHA's certification will be post-reviewed by HUD during the next on-site review, but is subject to verification at any time. Appropriate sanctions for intentional false certification will be imposed, including suspension or debarment of the signatories, the loss of high performer designation, a lower grade for individual indicators and a lower PHMAP total weighted score.

(c) For those developments of a PHA where management functions have been assumed by an RMC, the PHA's certification shall identify the development and the management functions assumed by the RMC. The PHA shall obtain a certified questionnaire from the RMC as to the management functions undertaken by the RMC. The PHA shall submit the RMC's certified questionnaire along with its own. The RMC's certification shall be approved by its Executive Director or Chief Executive Officer of whatever title.

§ 901.105 Computing assessment score.

(a) Grades within indicators and components have the following point values:

(1) Grade A = 10.0 points;
(2) Grade B = 8.5 points;
(3) Grade C = 7.0 points;
(4) Grade D = 5.0 points;
(5) Grade E = 3.0 point; and
(6) Grade F = 0.0 points.

(b) If indicators or components are designated as having additional weight (e.g., x1.5 or x2), the points in each grade will be multiplied times the additional weight.

(c) Indicators will be graded individually. Components within an indicator will be graded individually, and then will be used to determine a single grade for the indicator, by dividing the total number of component points by the total number of component weights and rounding off to two decimal places. The total number of component weights for this purpose includes a one for components that are unweighted (i.e., they are weighted x1, rather than x1.5 or x2).

(d) Adjustment for physical condition and neighborhood environment. The overall PHMAP score will be adjusted by adding weighted points that reflect the weight to be given to the differences in the difficulty of managing developments that result from physical condition and neighborhood environment:

(1) Weighting shall apply to the following three indicators only:

(i) Indicator #1, vacancy rate and unit turnaround;

(ii) Indicator #4, work orders; and

(iii) Indicator #5, annual inspection and condition of units and systems.

(2) Definitions of physical condition and neighborhood environment are:

(i) *Physical condition:* refers to units located in developments over ten years old that require major capital investment in order to meet minimum HQS standards or local codes, whichever is applicable. This excludes developments that have been comprehensively modernized.

(ii) *Neighborhood environment:* refers to units located within developments where the immediate surrounding neighborhood (that is a majority of the census tracts on all sides of the development) has at least 51% of families with incomes below the poverty rate as documented by the latest census data.

(3) Any PHA with 5% or more of its units subject to either or both of the above conditions shall, if they so choose, be issued a weighted PHMAP score in addition to the regular score based solely upon the certification of the PHA. The weighted score shall be calculated as follows:

Percent of units subject to physical condition and/or extra neighborhood environment:	Extra points
At least 5% but less than 10%	.5
At least 10% but less than 20%	.6
At least 20% but less than 30%	.7
At least 30% but less than 40%	.8
At least 40% but less than 50%	.9
At least 50%	1.0

(i) These extra points will be added to the score (grade) of the indicator(s) to which these conditions may apply. A PHA is required to certify on form HUD–50072, PHMAP Certification, the extent to which the conditions apply, and to which of the indicators the extra scoring points should be added.

(ii) Developments that have received comprehensive modernization within the past ten years are not eligible for a weighted score for the physical condition factor.

(iii) A PHA that receives a grade of A under indicators #4 and #5 may not claim the additional weight for indicator #1 since the physical condition of its developments is not applicable.

(iv) None of the weighted indicators may have a score that is more than its total weighted points, including the additional point, or fraction thereof, awarded for weighting.

(4) PHAs shall maintain supporting documentation to show how they arrived at the number and percentage of units out of their total inventory that are subject to weighting.

(i) If the basis was neighborhood environment, the PHA shall have on file the appropriate maps showing the census tracts surrounding the development(s) in question with supporting census data showing the level of poverty. Units that fall into this category but which have already been removed from consideration for other reasons (permitted exemptions and modifications and/or exclusions) shall not be counted in this calculation.

(ii) For the physical condition factor, a PHA would have to maintain documentation showing the age and condition of the units and the record of capital improvements, indicating that these particular units have not received modernization funds.

(iii) PHAs shall also document that in all cases, units that were exempted for other reasons were not included in the calculation.

§ 901.110 PHA request for exclusion or modification of an indicator or component.

(a) A PHA shall have the right to request the exclusion or modification of any indicator or component in its management assessment, thereby excluding or modifying the impact of those indicator's or component's grades in its PHMAP total weighted score.

(b) Exclusion and modification requests shall be submitted by a PHA at the time of its PHMAP certification submission to the State/Area Office along with supporting documentary justification, rather than during the appeal process.

(c) Requests for exclusions and modifications that do not include supporting documentary justification will not be considered.

(d) Indicator #2, modernization, shall be automatically excluded by the State/Area Office if a PHA does not have an open modernization program.

(e) Indicator #7, resident involvement, shall be automatically excluded by the State/Area Office for PHAs with 100 or fewer units.

§ 901.115 PHA score and status.

(a) PHAs that achieve a total weighted score of 90% or greater may be designated high performers. A PHA shall not be designated as a high performer if it scores below a grade of

C for any indicator. High performers will be afforded incentives that include substantial relief from reporting and other requirements, as described in § 901.130.

(b) PHAs that achieve a total weighted score of 90% or greater on indicator #2, modernization, may be designated mod-high performers.

(c) PHAs that achieve a total weighted score of less than 90% but not less than 60% may be designated standard. Standard performers will be afforded incentives that include substantial relief from reporting and other requirements, as described in § 901.130.

(d) PHAs that achieve a total weighted score of less than 60% may be designated as troubled.

(e) PHAs with more than 100 units that achieve a total weighted score of less than 60% on indicator (2), modernization, may be designated as troubled with respect to the program under section 14.

(f) Each PHA must post a notice of its PHMAP score and status in appropriate conspicuous and accessible locations in its offices and in each of its developments within two weeks of receipt of the score and status. In addition, HUD will publish every PHA's score and status in the Federal Register.

(g) Even though a PHA has satisfied all of the indicators for high or standard performer designation, the State/Area Office may reinstate any review as necessary to address the particular deficiencies, deny or rescind incentives or high performer status, as described in paragraphs (a) and (b) of this section in the case of a PHA that:

(1) Is operating under a special agreement with HUD;

(2) Is involved in litigation that bears directly upon the management of a PHA;

(3) Is operating under a court order;

(4) Demonstrates substantial evidence of fraud or misconduct, including evidence that the PHA's certification of indicators is not supported by the facts, resulting from such sources as routine reports and reviews, an Office of Inspector General investigation/audit, or an investigation by any appropriate legal authority; or

(5) Demonstrates substantial noncompliance in one or more areas (including areas not assessed by the PHMAP). Areas of substantial noncompliance include, but are not limited to, noncompliance with statutes (e.g., Fair Housing and Equal Opportunity statutes); regulations (e.g., 24 CFR part 85); or the Annual Contributions Contract (ACC) (e.g., the ACC, form HUD–53012A, Section 4, Mission of the PHA). Substantial noncompliance would cast doubt on the PHA's capacity to preserve and protect its public housing developments and operate them consistent with Federal law and regulations.

(h) When a State/Area Office Public Housing Director acts for any of the reasons stated in paragraph (e) of this section, the State/Area Office will send written notification to the PHA with a specific explanation of the reasons. An information copy will be forwarded to the Assistant Secretary for Public and Indian Housing.

(i) A PHA may appeal denial of high performer status in accordance with § 901.125.

§ 901.120 State/Area Office functions.

(a) The State/Area Office will assess each PHA within its jurisdiction on an annual basis:

(1) The State/Area Office will make determinations for high-performing, standard, troubled PHAs, and troubled PHAs with respect to the program under section 14 (mod-troubled) in accordance with a PHA's PHMAP weighted score.

(2) The State/Area Office will also make determinations for exclusion and modification requests.

(b) Each State/Area Office will notify each PHA of the PHA's grade and the grade of the RMC (if any) assuming management functions at any of the PHA's developments, in each indicator, the PHA's management assessment total weighted score and status, and if applicable, its handicapped score; any determinations concerning exclusion and modification requests; and any deadline date by which appeals must be received. PHA notification may include offers of pertinent technical assistance in problem areas, suggestions for means of improving problem areas, and areas of relief and incentives as a result of high performer status. The PHA must notify the RMC (if any) in writing, immediately upon receipt of the State/Area Office notification, of the RMC's grades.

(c) An on-site confirmatory review may be conducted of a PHA by the State/Area Office. The purpose of the on-site confirmatory review is to verify those indicators for which a PHA provides certification, as well as the accuracy of the information received in the State/Area Office pertaining to the remaining indicators.

(1) If, in an exceptional circumstance, a confirmatory review is conducted after the State/Area Office issues the initial notification letter, the State/Area Office should explain the results of the confirmatory review in writing, correct the PHAs total weighted score, if appropriate, and reissue the initial notification letter to the PHA.

(2) The State/Area Office shall conduct a confirmatory review of a PHA prior to the removal of troubled or mod-troubled designation.

(d) Determinations on appeals and on petitions to remove troubled or mod-troubled status will be made by the State/Area Office.

(e) Determinations of intentional false certifications will be made by the State/Area Office.

(f) The State/Area Office may deny or rescind a PHA's status as a standard or high performer, in accordance with § 901.115(e), so that it will not be entitled to any of the areas of relief and incentives.

(g) The State/Area Office will maintain PHMAP files for public inspection in accordance with § 901.155.

§ 901.125 PHA right of appeal.

(a) A PHA has the right to appeal its PHMAP score to the State/Area Office, including a troubled designation or designation as troubled with respect to the program under section 14. A PHA may appeal its management assessment rating on the basis of data errors, the denial of exclusion or modification requests when their denial affects a PHA's total weighted score, or a determination of intentional false certification:

(1) A PHA may appeal its management assessment rating to the State/Area Office only for the reasons stated in paragraph (a) of this section:

(i) A PHA may not appeal its PHMAP score to the State/Area Office unless it has submitted its certification to the State/Area Office.

(ii) A PHA may not appeal its PHMAP score to the State/Area Office if the reason the PHA received a deficient grade in any indicator or component was due to the fact the PHA did not submit a required report in a timely manner.

(2) The appeal shall be submitted to the State/Area Office and shall include supporting documentary justification of the reasons for the appeal.

(3) The State/Area Office will make determinations on initial appeals and will transmit the determination of the appeal to the PHA in a notification letter that will also include the date and place for submitting any further appeal.

(4) Appeals submitted to the State/Area Office without appropriate documentation will not be considered and will be returned to the PHA.

(5) A PHA may not appeal its PHMAP score if the reason the PHA received a deficient grade in any indicator or

component was due to the fact that the PHA did not submit a required report(s) in a timely manner.

(6) Appeals of rescission of high performer designation shall be made directly to the Assistant Secretary for Public and Indian Housing.

(b) A PHA may appeal the denial of an initial appeal by the State/Area Office to the Assistant Secretary for Public and Indian Housing, including initial appeals denying high performer designation, designation as troubled or designation as troubled with respect to the program under section 14, the denial of an appeal of a determination of intentional false certification, and the rescission of high performer designation. A PHA may appeal its management assessment rating on the basis of data errors, the denial of exclusion or modification requests when their denial affects a PHA's total weighted score, or a determination of intentional false certification.

(1) A PHA may appeal its management assessment rating to the Assistant Secretary for Public and Indian Housing only for the reasons stated in paragraph (b) of this section.

(2) A PHA may not appeal its PHMAP score to the Assistant Secretary unless it has submitted its certification to the State/Area Office.

(3) Appeals submitted to the Assistant Secretary for Public and Indian Housing without appropriate documentation will not be considered and will be returned to the PHA.

(c) A PHA has the right to appeal any refusal of a petition in accordance with § 901.140 to remove designation of troubled or troubled with respect to the program under section 14 to the Assistant Secretary for Public and Indian Housing.

(d) The date and place by which any appeal must be submitted will be specified in the letter from the State/Area Office notifying the PHA of any determination or action. For example, the State/Area Office initial notification letter or denial of initial appeal letter will specify the date and place by which appeals must be received. The date specified will be the 15th calendar day after the letter is mailed, not counting the day the letter is mailed. If the 15th day falls on a weekend or holiday, the date specified will be the next day that is not on a weekend or a holiday. Any appeal not received by the specified time and place will not be considered.

§ 901.130 Incentives.

(a) A PHA that is designated high performer or standard performer will be relieved of specific HUD requirements, effective upon notification of high or standard performer designation.

(b) A PHA shall not be designated a mod-high performer and be entitled to the applicable incentives unless it has been designated an overall high performer.

(c) High-performing PHAs and RMCs that receive a grade of ''A'' on each of the indicators for which they are assessed will receive a Certificate of Commendation from the Department as well as special public recognition.

(d) Representatives of high-performing PHAs may be requested to serve on Departmental working groups that will advise the Department in such areas as troubled PHAs and performance standards for all PHAs.

(e) Relief from any standard procedural requirements does not mean that a PHA is relieved from compliance with the provisions of Federal law and regulations or other handbook requirements. For example, although a high or standard performer may be relieved of requirements for prior HUD approval for certain types of contracts for services, it must still comply with all other Federal and State requirements that remain in effect, such as those for competitive bidding or competitive negotiation (see 24 CFR 85.36):

(1) PHAs will still be subject to regular Independent Auditor (IA) audits.

(2) Office of Inspector General (OIG) audits or investigations will continue to be conducted as circumstances may warrant.

(f) The State/Area Office will have discretion to subject a PHA to any requirement that would otherwise be omitted under the specified relief, in accordance with § 901.115(e).

§ 901.135 Memorandum of agreement.

(a) After consulting the independent assessment team and reviewing the report identified in section 6(j)2(b) of the 1937 Act, a Memorandum of Agreement (MOA), a binding contractual agreement between HUD and a PHA, shall be required for each PHA designated as troubled and mod-troubled. The scope of the MOA may vary depending upon the extent of the problems present in the PHA, but shall include:

(1) Baseline data, which should be raw data but may be the PHA's score in each of the indicators identified as a problem, or other relevant areas identified as problematic;

(2) Annual and quarterly performance targets, which may be the attainment of a higher grade within an indicator that is a problem, or the description of a goal to be achieved, for example, the reduction of rents uncollected to 6% or less by the end of the MOA annual period;

(3) Strategies to be used by the PHA in achieving the performance targets within the time period of the MOA;

(4) Technical assistance to the PHA provided or facilitated by the Department, for example, the training of PHA employees in specific management areas or assistance in the resolution of outstanding HUD monitoring findings;

(5) The PHA's commitment to take all actions within its control to achieve the targets;

(6) Incentives for meeting such targets, such as the removal of troubled or mod-troubled designation, fewer conditions placed on grants, and Departmental recognition for the most improved PHAs;

(7) The consequences of failing to meet the targets, including such sanctions as the imposition of budgetary limitations, declaration of substantial default and subsequent actions, limited denial of participation, suspension, debarment, or the imposition of operating funding and modernization thresholds; and

(8) A description of the involvement of local public and private entities, including PHA resident leaders, in carrying out the agreement and rectifying the PHA's problems. A PHA shall have primary responsibility for obtaining active local public and private entity participation, including the involvement of public housing resident leaders, in assisting PHA improvement efforts. Local public and private entity participation should be premised upon the participant's knowledge of the PHA, ability to contribute technical expertise with regard to the PHA's specific problem areas and authority to make preliminary/tentative commitments of support, financial or otherwise.

(b) A MOA shall be executed by:

(1) The PHA Board Chairperson and accompanied by a Board resolution, or a receiver or other AME acting in lieu of the PHA Board;

(2) The PHA Executive Director, or a receiver- or other AME-designated Chief Executive Officer;

(3) The Director, State/Area Office of Public Housing; and

(4) The appointing authorities of the Board of Commissioners, unless exempted by the State/Area Office.

(c) The Department encourages the inclusion of the resident leadership in MOA negotiations and the execution of the MOA.

(d) Upon designation of a large PHA (1250 or more units under management) as troubled, the State/Area Office shall make a referral to HUD Headquarters for appropriate recovery intervention and

the execution of an MOA by the Assistant Secretary of Public and Indian Housing.

(e) A PHA will monitor MOA implementation to ensure that performance targets are met in terms of quantity, timeliness and quality.

(f) A PHA will be removed from troubled status upon a determination by the State/Area Office that the PHA's assessment reflects an improvement to a level sufficient to remove the PHA from troubled status, or mod-troubled, i.e., a total weighted management assessment score of 60% or more.

§ 901.140 Removal from troubled status and mod-troubled status.

(a) A PHA has the right to petition the State/Area Office for the removal of a designation as troubled or mod-troubled.

(b) A PHA may appeal any refusal to remove troubled and mod-troubled designation to the Assistant Secretary for Public and Indian Housing in accordance with § 901.125.

(c) The State/Area Office shall conduct a confirmatory review of a PHA prior to the removal of troubled or mod-troubled designation.

§ 901.145 Improvement Plan.

(a) After receipt of the State/Area Office notification letter in accordance with § 901.120(b) or receipt of a final resolution of an appeal in accordance with § 901.125 or, in the case of an RMC, notification of its indicator grades from a PHA, a PHA or RMC shall correct any deficiency indicated in its management assessment within 90 calendar days.

(b) A PHA shall notify the State/Area Office of its action to correct a deficiency. A PHA shall also forward to the State/Area Office an RMC's report of its action to correct a deficiency.

(c) If the State/Area Office determines that a PHA or RMC has not corrected a deficiency as required within 90 calendar days after receipt of its final notification letter, the State/Area Office may require a PHA, or a RMC through the PHA, to prepare and submit to the State/Area Office an Improvement Plan within an additional 30 calendar days:

(1) The State/Area Office shall require a PHA or RMC to submit an Improvement Plan, which includes the information stated in paragraph (d) of this section, for each indicator that a PHA or RMC scored a grade ''F''.

(2) The State/Area Office may require, on a risk management basis, a PHA or RMC to submit an Improvement Plan, which includes the information stated in paragraph (d) of this section, for each indicator that a PHA scored a grade D or E, as well as other performance and/or compliance deficiencies as may be identified as a result of an on-site review of the PHA's operations.

(d) An Improvement Plan shall:

(1) Identify baseline data, which should be raw data but may be the PHA's score in each of the indicators identified as a problem in a PHA's or RMC's management assessment, or other relevant areas identified as problematic;

(2) Describe the procedures that will be followed to correct each deficiency; and

(3) Provide a timetable for the correction of each deficiency.

(e) The State/Area Office will approve or deny a PHA's or RMC's Improvement Plan, and notify the PHA of its decision. A PHA must notify the RMC in writing, immediately upon receipt of the State/Area Office notification, of the State/Area Office approval or denial of the RMC's Improvement Plan.

(f) An Improvement Plan that is not approved will be returned to the PHA with recommendations from the State/Area Office for revising the Improvement Plan to obtain approval. A revised Improvement Plan shall be resubmitted by the PHA or RMC within 30 calendar days of its receipt of the State/Area Office recommendations.

(g) If a PHA or RMC fails to submit an acceptable Improvement Plan, or to correct deficiencies within the time specified in an Improvement Plan or such extensions as may be granted by HUD, the State/Area Office will notify the PHA of its or the RMC's noncompliance. The PHA, or the RMC through the PHA, will provide HUD its reasons for lack of progress in submitting or carrying out the Improvement Plan within 30 calendar days of its receipt of the noncompliance notification. HUD will advise the PHA as to the acceptability of its reasons for lack of progress and, if unacceptable, will notify the PHA that it will be subject to sanctions provided for in the Annual Contributions Contract and HUD regulations.

§ 901.150 PHAs troubled with respect to the program under section 14 (mod-troubled PHAs).

(a) PHAs that achieve a total weighted score of less than 60% on indicator (2), modernization, may be designated as mod-troubled.

(b) PHAs designated as mod-troubled may be subject, under the Comprehensive Grant Program, to a reduction of formula allocation or other sanctions (24 CFR part 968, subpart C) or under the Comprehensive Improvement Assistance Program to disapproval of new funding or other sanctions (24 CFR part 968, subpart B).

§ 901.155 PHMAP public record.

The State/Area Office will maintain PHMAP files, including certifications, the records of exclusion and modification requests, appeals, and designations of status based on physical condition and neighborhood environment, as open records, available for public inspection for three years in accordance with any procedures established by the Field Office to minimize disruption of normal office operations.

§ 901.200 Events or conditions that constitute substantial default.

(a) The Department may determine that events have occurred or that conditions exist that constitute a substantial default if a PHA is determined to be in violation of Federal statutes, including but not limited to, the 1937 Act, or in violation of regulations implementing such statutory requirements, whether or not such violations would constitute a substantial breach or default under provisions of the relevant Annual Contributions Contract (ACC).

(b) The Department may determine that a PHA's failure to satisfy the terms of a Memorandum of Agreement entered into in accordance with § 901.135 of this part, or to make reasonable progress to meet time frames included in a Memorandum of Agreement, are events or conditions that constitute a substantial default.

(c) The Department shall determine that a PHA that has been designated as troubled and does not show significant improvement (10 point increase) in its PHMAP score within one year are events or conditions that constitute a substantial default:

(1) A PHA shall be notified of such a determination in accordance with § 901.205(c).

(2) A PHA may waive, in writing, receipt of explicit notice from the Department as to a finding of substantial default, and voluntarily consent to a determination of substantial default. The PHA must concur on the existence of substantial default conditions which can be remedied by technical assistance, and the PHA shall provide the Department with written assurances that all deficiencies will be addressed by the PHA. The Department will then immediately proceed with interventions as provided in § 901.210.

(d) The Department may declare a substantial breach or default under the ACC, in accordance with its terms and conditions.

(e) The Department may determine that the events or conditions constituting a substantial default are limited to a portion of a PHA's public housing operations, designated either by program, by operational area, or by development(s).

§ 901.205 Notice and response.

(a) If information from an annual assessment, as described in § 901.100, a management review or audit, or any other credible source indicates that there may exist events or conditions constituting a substantial breach or default, the Department shall advise a PHA of such information. The Department is authorized to protect the confidentiality of the source(s) of such information in appropriate cases. Before taking further action, except in cases of apparent fraud or criminality, and/or in cases where emergency conditions exist posing an imminent threat to the life, health, or safety of residents, the Department shall afford the PHA a timely opportunity to initiate corrective action, including the remedies and procedures available to PHAs designated as ''troubled PHAs,'' or to demonstrate that the information is incorrect.

(b) In any situation determined to be an emergency, or in any case where the events or conditions precipitating the intervention are determined to be the result of criminal or fraudulent activity, the Assistant Secretary is authorized to intercede to protect the residents' and the Department's interests by causing the proposed interventions to be implemented without further appeals or delays.

(c) Upon a determination or finding that events have occurred or that conditions exist that constitute a substantial default, the Assistant Secretary shall provide written notification of such determination or finding to the affected PHA. Written notification shall include, but need not necessarily be limited to:

(1) Identification of the specific covenants, conditions, and/or agreements under which the PHA is determined to be in non-compliance;

(2) Identification of the specific events, occurrences, or conditions that constitute the determined noncompliance;

(3) Citation of the communications and opportunities to effect remedies afforded pursuant to paragraph (a) of this section;

(4) Notification to the PHA of a specific time period, to be not less than 10 calendar days, except in cases of apparent fraud or other criminal behavior, and/or under emergency conditions as described in paragraph (a) of this section, nor more than 30 calendar days, during which the PHA shall be required to demonstrate that the determination or finding is not substantively accurate; and

(5) Notification to the PHA that, absent a satisfactory response in accordance with paragraph (d) of this section, the Department will take control of the PHA, using any or all of the interventions specified in § 901.210, and determined to be appropriate to remedy the noncompliance, citing § 901.210, and any additional authority for such action.

(d) Upon receipt of the notification described in paragraph (c) of this section, the PHA must demonstrate, within the time period permitted in the notification, factual error in the Department's description of events, occurrences, or conditions, or show that the events, occurrences, or conditions do not constitute noncompliance with the statute, regulation, or covenants or conditions to which the PHA is cited in the notification.

§ 901.210 Interventions.

(a) Interventions under this part (including an assumption of operating responsibilities) may be limited to one or more of a PHA's specific operational areas (e.g., maintenance, modernization, occupancy, or financial management or to a single development or a group of developments). Under this limited intervention procedure, the Department could select, or participate in the selection of, an AME to assume management responsibility for a specific development, a group of developments in a geographical area, or a specific operational area, while permitting the PHA to retain responsibility for all programs, operational areas, and developments not so designated.

(b) Upon determining that a substantial default exists under this part, the Department may initiate any interventions deemed necessary to maintain decent, safe, and sanitary dwellings for residents. Such intervention may include:

(1) Providing technical assistance for existing PHA management staff;

(2) Selecting or participating in the selection of an AME to provide technical assistance or other services up to and including contract management of all or any part of the public housing developments administered by a PHA;

(3) Assuming possession and operational responsibility for all or any part of the public housing administered by a PHA; and

(4) The provision of intervention and assistance necessary to remedy emergency conditions.

(c) HUD may take the actions described in this part sequentially or simultaneously in any combination.

§ 901.215 Contracting and funding.

(a) Upon a declaration of substantial default or breach, and subsequent assumption of possession and operational responsibility, the Department may enter into agreements, arrangements, and/or contracts for or on behalf of a PHA, or to act as the PHA, and to expend or authorize expenditure of PHA funds, irrespective of the source of such funds, to remedy the events or conditions constituting the substantial default.

(b) In entering into contracts or other agreements for or on behalf of a PHA, the Department shall comply with requirements for competitive procurement consistent with 24 CFR 85.36, except that, upon determination of public exigency or emergency that will not permit a delay, the Department can enter into contracts or agreements on a non-competitive basis, consistent with the standards of 24 CFR 85.36(d)(4).

§ 901.220 Resident participation in competitive proposals to manage the housing of a PHA.

(a) When a competitive proposal to manage the housing of a PHA in substantial default is solicited in a Request for Proposals (RFP) pursuant to section 6(j)(3)(A)(i) of the 37 Act, the RFP, in addition to publishing the selection criteria, will:

(1) Include a requirement for residents to notify the Department if they want to be involved in the selection process; and

(2) Include a requirement for the PHA that is the subject of the RFP to post a notice and a copy of the RFP in a prominent location on the premises of each housing development that would be subject to the management chosen under the RFP, for the purposes of notifying affected residents that

(i) Invites residents to participate in the selection process; and

(ii) Provides information, to be specified in the RFP, on how to notify the Department of their interest.

(b) Residents must notify the Department by the RFP's application due date of their interest in participating in the selection process. In order to participate, the total number of residents that notify the Department must equal at least five percent of the residents, or the notification of interest must be from an organization or

organizations of residents whose membership must equal at least five percent of the PHA's residents.

(c) If the required percentage of residents notify the Department, a minimum of one resident may be invited to serve as an advisory member on the evaluation panel that will review the applications in accordance with applicable procurement procedures. Resident advisory members are subject to all applicable confidentiality and disclosure restrictions.

§ 901.225 Resident petitions for remedial action.

The total number of residents that petition the Department to take remedial action pursuant to sections 6(j)(3)(A)(i) through (iv) of the 1937 Act must equal at least five percent of the residents, or the petition must be from an organization or organizations of residents whose membership must equal at least five percent of the PHA's residents.

§ 901.230 Receivership.

(a) Upon a determination that a substantial default has occurred and without regard to the availability of alternate remedies, the Department may petition the court for the appointment of a receiver to conduct the affairs of the PHA in a manner consistent with statutory, regulatory, and contractual obligations of the PHA and in accordance with such additional terms and conditions that the court may provide. The court shall have authority to grant appropriate temporary or preliminary relief pending final disposition of any petition by HUD.

(b) The appointment of a receiver pursuant to this section may be terminated upon the petition to the court by the PHA, the receiver, or the Department, and upon a finding by the court that the circumstances or conditions that constituted substantial default by the PHA no longer exist and that the operations of the PHA will be conducted in accordance with applicable statutes and regulations, and contractual covenants and conditions to which the PHA and its public housing programs are subject.

§ 901.235 Technical assistance.

(a) The Department may provide technical assistance to a PHA that is in substantial default.

(b) The Department may provide technical assistance to a troubled or non-troubled PHA if the assistance will enable the PHA to achieve satisfactory performance on any PHMAP indicator. The Department may provide such assistance if a PHA demonstrates a commitment to undertake improvements appropriate with the given circumstances, and executes an Improvement Plan in accordance with § 901.145.

(c) The Department may provide technical assistance to a PHA if without abatement of prevailing or chronic conditions, the PHA can be projected to be designated as troubled by its next PHMAP assessment.

(d) The Department may provide technical assistance to a PHA that is in substantial default of the Annual Contributions Contract.

(e) The Department may provide technical assistance to a PHA whose troubled designation has been removed and where such assistance is necessary to prevent the PHA from being designated as troubled within the next two years.

Date: February 26, 1996.

Kevin E. Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 96–10956 Filed 5–3–96; 8:45 am]

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Monday
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Part IV

Federal Reserve System

12 CFR Parts 207, 220, and 221

Securities Credit Transactions; Rule and Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Regulation T; Docket No. R–0772]

RIN 7100–AB28

Securities Credit Transactions; Review of Regulation T, ''Credit by Brokers and Dealers''

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting amendments to Regulation T, the regulation that covers extensions of credit by and to broker and dealers. These amendments reflect consideration of the comments submitted in response to the proposed rule issued by the Board for public comment on June 29, 1995.

Major amendments include eliminating restrictions on the ability of broker-dealers to arrange for credit; increasing the type and number of domestic and foreign securities that may be bought on margin and increasing the loan value of some securities that are already marginable; deleting Board rules regarding options transactions in favor of the rules of the options exchanges; and reducing restrictions on transactions involving foreign persons, foreign securities, and foreign currency. In addition, technical changes are being adopted to provide clarification, update references, or restore language inadvertently deleted. The Board is also soliciting comments on the possibility of additional Regulation T amendments in a separate document published elsewhere in today's Federal Register.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Scott Holz, Senior Attorney, or Angela Desmond, Senior Counsel, Division of Banking Supervision and Regulation (202) 452–2781; for the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202) 452–3544.

SUPPLEMENTARY INFORMATION: In 1992, the Board issued an Advance Notice of Proposed Rulemaking and Request for Comment to aid in its periodic review of Regulation T.[1] In 1994, the Board proposed and adopted amendments exempting transactions involving government securities and shortening the time period within which customers must deposit margin requirements or make payment for securities in light of the industry's move to a three-day settlement period.[2] In June 1995, the Board published proposed amendments covering additional areas of Regulation T.[3] Forty-six comment letters were received in response to the 1995 proposal. The review of Regulation T predates but is now encompassed within the Board's regulatory review under section 303 of the Riegle Community Redevelopment and Regulatory Improvement Act of 1994.

The Board is now adopting a final rule which covers four major areas: arranging for credit, loan value of securities, options transactions, and international transactions.

In the arranging area, the Board is eliminating all restrictions on the ability of broker-dealers to arrange for credit that does not otherwise violate the lending provisions of the Board's margin regulations.

Amendments regarding the loan value of securities include changing the loan value of money market and exempted securities mutual funds from 50 percent to ''good faith'' loan value. The Board is adopting additional, alternate criteria for unlisted debt securities so that any debt security with an investment grade rating will be entitled to ''good faith'' loan value. The Board is also adopting an additional method for foreign stocks to qualify for margin treatment that will result in an increase in the number of foreign margin stocks from approximately 700 to approximately 1800 stocks. The Board is extending loan value to convertible bonds that do not meet the existing margin criteria if the underlying security is already marginable. Finally, the Board is extending loan value to exchange-traded options, which will be entitled to the loan value deemed appropriate by the exchange that trades the option, subject to the approval of the Securities and Exchange Commission (SEC).

In addition to giving loan value to exchange-traded options, other amendments in the options area will increase Regulation T's reliance on the margin rules of the exchange where the option is traded for customer and specialist transactions. This will allow increased flexibility in recognizing the offsetting nature of certain transactions and assets, such as financial futures. The Board is retaining the current provisions until June 1, 1997 in response to requests from options exchanges for extra time to develop exchange rules and have them approved by the SEC.

The Board is reducing Regulation T restrictions on international transactions involving the borrowing and lending of foreign securities that are not publicly traded in the United States and giving broker-dealers greater flexibility to accept foreign currencies, compute margin requirements using foreign currencies, and deal with foreign broker-dealers on the same basis as domestic broker-dealers. These changes are discussed more fully below. The amendments are discussed in the order they appear in the regulation.

Section 220.2 Definitions

The following new definitions or amended definitions are being adopted as proposed: *cash equivalent, exempted securities mutual fund, foreign person, in the money, margin security, money market mutual fund, non-U.S. traded foreign security*, and *OTC margin stock*. As proposed, the Board will delete the definition of *in or at the money*, but this will be delayed until June 1, 1997, when the other option-specific rules of Regulation T are deleted.[4] The effect of the definitions is described below under the section in which the defined term is used. Definitional changes that have the effect of increasing the types and number of securities that are marginable are discussed below under section 220.18, Supplement: *Margin requirements*.

The following definitions are being amended based on comments: *covered option transaction, escrow agreement, OTC margin bond, permitted offset position, short call or short put*, and *underlying security*. The modifications are technical in nature, with the exception of those discussed in the following two paragraphs.

The Board proposed to add the word ''sold'' to the definition *of short call or short put* and the list of permissible transactions in the cash account to mimic rules of the self-regulatory organizations (SROs). The word is not being added in light of comments pointing out that the Board's proposal would cover transactions that are not covered by SRO rules, which was not the Board's intent.

[1] 57 *FR* 37109 (August 18, 1992).

[2] The proposed amendments were published at 59 *FR* 33923 (July 1, 1994) and the final rule was published at 59 *FR* 53565 (October 25, 1994).

[3] 60 *FR* 33763 (June 29, 1995). The comment period was subsequently extended at the request of commenters (60 *FR* 43726, August 23, 1995).

[4] See also the definition of *permitted offset position* in section 220.2, section 220.4(b)(8), section 220.12(b)(6), and section 220.18(f). Several options exchanges requested a delay in effectiveness of Regulation T provisions which replace Board-specified options rules with reference to exchange rules. In order to allow the exchanges to develop rules in these areas and have them approved by the SEC, the Board is delaying the effectiveness of the new options provisions in Regulation T until June 1, 1997.

The definition of *underlying security* is being changed to *underlying asset* to account for the fact that not every asset underlying a securities option is a security. A conforming change has also been made to the definition of *in the money*. The definition is also being changed from the proposal so that customers and specialists may hold less than all of the securities in an index as cover for a short option position if SEC-approved rules of the SRO where the option is traded allow partial baskets. The language that was proposed required that all securities that comprise an index be held in the same proportion as the index.

Section 220.3 General Provisions

The Board is amending section 220.3(e)(4), which permits what the industry refers to as ''cashless exercise'' of employee stock options, to cover additional types of securities received by customers pursuant to an employee benefit plan and to conform with SEC rules that determine who is covered under these plans and therefore who may take advantage of the ''cashless exercise'' procedure. The Board is modifying the language that was proposed to accommodate employee stock award plans.

The Board is also adding a new paragraph to the general provisions in section 220.3 to make clear that freely convertible currency can be accepted by creditors and treated at its U.S. dollar equivalent on a marked-to-market basis for all purposes under Regulation T. Marking to market should minimize currency risk.

Section 220.4 Margin Account

Consistent with the amendment to the general provisions in section 220.3 of Regulation T allowing freely convertible foreign currency to be accepted for all purposes under Regulation T, the Board is amending Regulation T to enhance the ability of broker-dealers to extend credit denominated in a foreign currency by eliminating the restriction in section 220.4(c) that prevents an increase in one foreign currency subaccount from offsetting a decrease in another foreign currency subaccount. The Board is also simplifying the language that was proposed for section 220.4(b)(8) to allow broker-dealers to extend credit in any freely convertible currency, whether or not a security denominated in that currency is (or was) held in the account.

As proposed, the Board is completing the process of deferring to SRO rules for options transactions by deleting specific provisions governing cover or positions in lieu of margin found in section 220.5(c) in favor of SRO rules. This change will become effective on June 1, 1997. The margin requirement for a customer who writes an over-the-counter (OTC) option that is purchased by its broker-dealer will be determined by the rules of the broker-dealer's examining authority.

As proposed, the margin account exceptions and special provisions in section 220.5 have been incorporated into section 220.4 so that each Regulation T account is described in a single section. The special memorandum account and the government securities account are being renumbered as section 220.5 and 220.6 respectively. No substantive change is intended by this renumbering.

Section 220.8 Cash Account

The Board is amending the cash account, as proposed, to recognize industry practice by specifically allowing the purchase of nonsecurities on a cash basis in the cash account. Because this change includes foreign currencies, foreign exchange transactions can be effected on a cash basis in the account.

The Board is adding money market mutual funds to the definition of *cash equivalent* as proposed to allow these mutual fund shares to be used to cover puts in the cash account. In response to commenters, the Board has added language to section 220.8(a)(4) to make clear that cash equivalents covering options transactions may be held in the account via an escrow agreement.

The specific option transactions formerly permitted in the cash account pursuant to section 220.8(a)(3) have been incorporated into a definition for *covered option transactions* along with new authority, effective June 1, 1997, for the SROs to permit additional transactions with finite risk in this account. The proposed language has been modified to permit greater flexibility for the SROs. This flexibility includes covering (1) transactions in which a customer's risk is not a fixed dollar amount but is effectively limited to the value of the assets securing it, (2) transactions in which early exercise of any aspect of the transaction results in contemporaneous exercise of all aspects, and (3) OTC options transactions. SROs may designate covered transactions by category if they choose to do so.

The Board is amending section 220.8(b)(1)(ii), the cash account provision covering the purchase of foreign securities with extended settlement periods, as proposed, so that a broker-dealer will not be required to sell a customer's securities for failure to make payment until one day beyond the foreign settlement date. Currently, a broker-dealer must receive its customer's payment by settlement date. The extra day will allow the broker-dealer to verify that its failure to receive the customer's payment is not due to time zone differences, error, or other exceptional circumstances.

Section 220.11 Broker-Dealer Credit Account

Two substantive changes proposed by the Board are being made to section 220.11(a), *Permissible transactions.* First, the Board is amending section 220.11(a) to permit foreign broker-dealers to use this account for delivery-versus-payment transactions with U.S. broker-dealers. Under this amendment foreign broker-dealers are referred to as ''persons regulated by a foreign securities authority.'' Regulation T incorporates the definitions from section 3(a) of the Act, which defines a ''foreign securities authority'' to include entities ''empowered by a foreign government to administer or enforce laws as they relate to securities matters.'' Several commenters stated that the Board's proposal may not encompass entities such as universal banks that are generally recognized as broker-dealers but are regulated by a banking regulator that is also responsible for securities regulation in that country. The Board believes that the phrase ''person regulated by a foreign securities authority,'' is broad enough for purposes of Regulation T to cover universal banks.

The Board is also amending section 220.11(a) to include ''prime broker'' arrangements set up under SEC guidelines [5] in the list of permissible transactions. This will permit use of the broker-dealer credit account by executing broker-dealers so that a customer's transactions may be consolidated at the customer's prime broker.

In 1995, the Board proposed an amendment to clarify that the joint back office (JBO) arrangements established pursuant to section 220.11(a)(2), which allow participant broker-dealers to be treated as if they were self-clearing broker-dealers, require a reasonable relationship between the owners' equity interests and the amount of business transacted through the JBO. The Board's intention in 1983 in first permitting the formation of JBOs was to allow for economies of scale among registered broker-dealers, and the Board believed it was unnecessary to explicitly require a specific capital structure to ensure equitable treatment among participants.

[5] See, Fed. Sec. L. Rep. (CCH) ¶ 76,819.

Several commenters noted that the Board's 1995 proposal was ambiguous; others suggested that the current language could be interpreted to prevent unreasonable arrangements without the need for amendment; and several commenters, including some opposed to the Board's proposal, were in favor of involving SROs in this process. After considering the comments, the Board has decided not to incorporate its understanding into the regulation and believes it is appropriate to rely on the authority of the JBO's examining authority (SRO) to ensure the reasonableness of JBO arrangements under its supervision.

Section 220.12 Market Functions Account

The Board proposed two substantive amendments to this section and is adopting both of them. First, the Board is amending section 220.12(b), *Specialists,* to delete the specific ''permitted offset positions'' established by the Board in favor of SEC-approved rules of the SROs. Permitted offset positions are entitled to good faith margin, and allowing exchange rules to govern these transactions is consistent with the Board's intention to allow margin requirements for options transactions and margin requirements for specialists to be determined by the appropriate market, subject to SEC approval. This change will be effective June 1, 1997.

Second, the Board is revising the description of OTC marketmakers and third marketmakers to respond to questions raised about the coverage of this provision. The revision concerning third marketmakers mirrors the language in Regulation U, while the revision concerning OTC marketmakers ensures that the exempt credit available to OTC marketmakers, like the exempt credit for specialists, is in return for market-making obligations enforced by the regulatory authority for that market.

Section 220.13 Arranging for Loans by Others

The Board is amending section 220.13 to permit creditors to arrange for any credit transaction so long as they do not willfully arrange credit that otherwise violates the Board's margin regulations. Currently, broker-dealers cannot arrange for transactions they could not engage in themselves unless covered by one of the exceptions found in this section.

Section 7 of the Act requires broker-dealers to comply with Federal Reserve margin regulations when they ''extend or maintain credit or arrange for the extension or maintenance of credit.'' Since 1938, Regulation T has contained a provision addressing the ''arranging'' of credit by broker-dealers. This provision remained unaltered until 1975, when the Board began to adopt exceptions to the general prohibition. Although the arranging prohibition was intended to prevent a broker-dealer from circumventing Regulation T by arranging for another lender to extend credit that the broker-dealer was prevented from extending itself, the Board's regulations now cover most U.S. margin lenders directly.[6]

One of the most basic and frequently raised trends noted in the comments received since the Board announced its review of Regulation T is the erosion of barriers between broker-dealers and other lenders, including globalization of the securities markets and the increasing overlap in the businesses of these various lenders. Several trade associations and broker-dealers responded favorably to the Board's request for comment on applying the arranging restriction only to credit that otherwise violates the Board's margin regulations.

The Board has concluded that broker-dealers should be permitted to arrange for any credit that is not directly prohibited by a Federal Reserve margin regulation. Because a broker-dealer may not know all of the credit terms agreed to between its customer and the actual lender, the amended language prohibits a broker-dealer from *willfully* arranging credit that violates one of the Board's margin regulations. The ability of broker-dealers to arrange for credit in connection with new issues of securities will still be constrained by section 11(d) of the Act and the rules of the SEC issued thereunder.[7]

Section 220.16 Borrowing and Lending Securities

The Board proposed two changes for this section, and is adopting both of them. First, the Board is expanding the types of permissible collateral for securities lending transactions to include marginable foreign sovereign debt securities and any other collateral that is acceptable to the SEC when a broker-dealer borrows securities from its customer.[8]

Second, the Board is adding a new subsection 220.16(b) to allow U.S. broker-dealers to lend foreign securities that are not publicly traded in the United States to a foreign person for any purpose, and against any collateral, legally permitted in the foreign country. Although several commenters stated their preference for also extending this liberalized treatment to foreign stocks that are publicly traded in the United States, other commenters, including U.S. securities exchanges, stressed the importance of equal treatment in this area for all securities that are publicly traded in the United States. The Board is confirming several clarifications in this area requested by the commenters: (1) a foreign security not listed on NASDAQ or a U.S. national securities exchange is not ''U.S. traded'' solely because American Depository Receipts (ADRs) on the foreign security are traded in the United States; (2) new section 220.16(b) is not mandatory and creditors may continue to borrow and lend foreign securities under the existing rule in section 220.16(a); and (3) coverage of the term ''foreign lender'' is determined by the status of the beneficial owner of an account and includes a non-U.S. person with a U.S. investment adviser or other fiduciary. The Board is also amending the language that was proposed to make clear that a creditor may borrow foreign securities pursuant to section 220.16(b) for the purpose of relending them to a foreign person (or relending them to a U.S. person as long as the ultimate borrower is a foreign person).

The Board is also amending section 220.16 to address questions regarding ''pre-borrowing,'' that is the borrowing of securities in anticipation of a short sale. Currently, securities may be borrowed for a permitted purpose when the transaction has been effected ''or is in immediate prospect''.[9] The section will now provide that a creditor who reasonably anticipates a short sale may borrow securities up to one standard settlement cycle in advance of the trade date. The standard settlement cycle is contained in SEC Rule 15c6–1 [10] and is currently three business days.

[6] The Board adopted Regulation U in 1936 to cover securities credit extended by banks. In 1968 the Board adopted Regulation G to cover most other margin lenders in the United States, and in 1971 the Board adopted Regulation X to cover U.S. borrowers obtaining margin credit against U.S. securities abroad.

[7] Section 11(d) of the Act prohibits a broker-dealer from extending or maintaining or arranging for the extension or maintenance of credit on any newly issued security if the broker-dealer has been involved in the distribution of that security within the past thirty days. The section is aimed at preventing a broker-dealer from inducing its customer to buy on credit securities which it has undertaken to distribute to the public.

[8] The SEC requirements are found in Rule 15c3–3 (17 CFR 240.15c3–3).

[9] See 12 CFR 220.103, a Board Interpretation reprinted in the *Federal Reserve Regulatory Service* at 5–472.

[10] 17 CFR 240.15c6–1.

Section 220.17 Requirements for the List of Marginable OTC Stocks and the List of Foreign Margin Stocks

The Board is adopting additional, alternative criteria for determining which foreign stocks qualify as margin equity securities. The Board has published a *List of Foreign Margin Stock* (Foreign List) since 1990, using criteria modeled on those for OTC margin stocks. In the 1995 proposal, the Board asked for comment on whether foreign stocks should also be marginable if they meet two criteria: (1) the SEC or CFTC has approved trading in the United States of options, warrants, or futures on a foreign securities index that contains the foreign stock and (2) the stock is deemed to have a ''ready market'' for purposes of the SEC's net capital rule.[11] The SEC has issued a no-action letter that effectively treats all stocks on the Financial Times/Standard & Poor's World Actuaries Indices as having a ''ready market'' for capital purposes, and requested comment on adopting regulatory language to this effect.[12]

None of the commenters opposed the Board's proposal to enlarge the number of foreign margin stocks, but many suggested modification of the proposed criteria. Some commenters asked the Board to use the SEC's capital rule's ''ready market'' test as a criterion for determining the margin status of foreign securities. The Board has concluded that a determination that a foreign stock has a ''ready market'' for purposes of the SEC's net capital rule is a more particularized determination about the collateral value of the stock than SEC or CFTC approval for trading in the United States of an index product containing the stock. The Board is therefore adopting this test as an alternate method by which stocks will be included on the Foreign List. To implement this change, stocks on the Financial Times/Standard & Poor's Actuaries World Indices will be added to the Board's Foreign List as soon as practical.

Comments were few and contradictory concerning how a new test for foreign margin stocks should be integrated with the Board's Foreign List. The Board is requesting additional comment regarding the Foreign List in the proposed rule published elsewhere today in the Federal Register.

Section 220.18 Supplement: Margin Requirements

The Board is increasing the coverage of the definitions of *margin security* and *OTC margin bond* and is allowing loan value for exchange-traded options that are currently denied loan value.[13] The Board is also changing the loan value of mutual funds whose portfolios consist of exempted securities and money market mutual funds. These mutual funds were previously subject to the margin for margin equity securities (currently 50 percent) and today's amendments will instead allow good faith loan value.

The Board is amending the definition of *margin security* to cover a debt security convertible into a margin security. This mirrors the treatment of convertible bonds in Regulations G and U, as well as Regulation T's treatment of foreign convertible bonds.

The Board is also amending the definition of *OTC margin bond* to include any nonconvertible debt security with an investment grade rating. Although commenters suggested a variety of ways to expand the categories of unlisted debt securities entitled to good faith margin as ''OTC margin bonds,'' at a minimum there was agreement that an investment grade rating (i.e. a rating in one of the top four rating categories by a nationally recognized statistical rating organization) should be sufficient to make a debt security marginable. The Board has successfully used rating criteria for unregistered mortgage-related securities [14] and foreign debt securities and believes it is now appropriate to enlarge the number of qualifying ratings and extend this treatment to other debt securities.

The Board is permitting loan value for exchange-traded options, but has modified its 1995 proposal that options be given the same fifty percent loan value if listed on a national securities exchange as other exchange-traded equity securities. Commenters, including some of the options exchanges, indicated that the time value of options may make it appropriate to have higher margin requirements for options approaching expiration and expressed support for use of SRO rules in this area generally. Rather than adopting a flat 50 percent margin requirement, the Board is incorporating into Regulation T the margin requirements established by the exchange that trades the option. This change will also respond to commenters seeking confirmation that the Board intends to allow loan value for options on non-equity securities. To ensure comparability with exchange-traded warrants on securities indexes and warrants on foreign currency, these products will also be subjected to exchange maintenance margin rules in lieu of specific Regulation T requirements. Margin requirements for short OTC options will continue to be subject to the rules of the examining authority of the broker-dealer involved.

Board Interpretations

The Board has begun to review its interpretations of Regulation T, and is deleting eleven interpretations as a first step. These interpretations have either been incorporated directly into the regulation or have become moot due to subsequent amendments. The Board will continue its review to cover the remaining interpretations.

Regulatory Flexibility Act

The amendments being adopted are intended to simplify regulatory requirements and eliminate restrictions currently imposed on broker-dealers and their customers. The Board is also increasing reliance on the rules of the SEC and SROs so that Regulation T will reflect market developments that are subsequently approved by regulators with primary responsibility for the securities markets. The Board believes that these benefits will be shared by all broker-dealers and the amendments will not have a substantial adverse effect on a significant number of small broker-dealers.

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in this rule.

List of Subjects in 12 CFR Part 220

Banks, banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, 12 CFR Part 220 is amended as follows:

PART 220—CREDIT BY BROKERS AND DEALERS (REGULATION T)

1. The authority citation for Part 220 continues to read as follows:

Authority: 15 U.S.C. 78c, 78g, 78h, 78q, and 78w.

[11] See SEC Rule 15c3–1 (17 CFR 240.15c3–1).

[12] 58 *FR* 44310, August 20, 1993.

[13] Although most customers cannot purchase exchange-traded options on credit, specialists in these options and the underlying securities have been able to obtain good faith credit on options for some time.

[14] The Board first used a rating requirement when it fulfilled Congress' mandate under the Secondary Mortgage Market Enhancement Act of 1984 by making a ''mortgage-related security'' marginable. The Congressional definition of ''mortgage-related security'' included a requirement that the security be rated in one of the top two rating categories by a nationally recognized statistical rating organization.

2. Sections 220.1 through 220.18 are revised to read as follows:

§ 220.1 Authority, purpose, and scope.

(a) *Authority and purpose.* Regulation T (this part) is issued by the Board of Governors of the Federal Reserve System (the Board) pursuant to the Securities Exchange Act of 1934 (the Act) (15 U.S.C. 78a *et seq.*). Its principal purpose is to regulate extensions of credit by and to brokers and dealers; it also covers related transactions within the Board's authority under the Act. It imposes, among other obligations, initial margin requirements and payment rules on securities transactions.

(b) *Scope.* (1) This part provides a margin account and eight special purpose accounts in which to record all financial relations between a customer and a creditor. Any transaction not specifically permitted in a special account shall be recorded in a margin account.

(2) This part does not preclude any exchange, national securities association, or creditor from imposing additional requirements or taking action for its own protection.

(3) This part does not apply to transactions between a customer and a broker or dealer registered only under section 15C of the Act.

§ 220.2 Definitions.

The terms used in this part have the meanings given them in section 3(a) of the Act or as defined in this section.

Cash equivalent means securities issued or guaranteed by the United States or its agencies, negotiable bank certificates of deposit, bankers acceptances issued by banking institutions in the United States and payable in the United States, or money market mutual funds.

Covered option transaction means:

(1) In the case of a short call, the underlying asset (or a security immediately convertible into the underlying asset, without the payment of money) is held in or purchased for the account on the same day, and the option premium is held in the account until cash payment for the underlying asset or convertible security is received; or

(2) In the case of a short put, the creditor obtains cash in an amount equal to the exercise price or holds in the account cash equivalents with a current market value at least equal to the exercise price and, except in the case of money market mutual funds, with one year or less to maturity; or

(3) In the case of a short put or short call, the creditor verifies that the appropriate escrow agreement will be delivered to the creditor promptly and the option premium is held in the account until such delivery is made; or

(4) Beginning June 1, 1997, any other transaction involving options or warrants in which the customer's risk is limited and all elements of the transaction are subject to contemporaneous exercise if:

(i) the amount at risk is held in the account in cash, cash equivalents, or via an escrow receipt; and

(ii) the transaction is eligible for the cash account by the rules of the registered national securities exchange authorized to trade the option or warrant or by the rules of the creditor's examining authority in the case of an unregistered option, provided that all such rules have been approved or amended by the SEC.

Credit balance means the cash amount due the customer in a margin account after debiting amounts transferred to the special memorandum account.

Creditor means any broker or dealer (as defined in sections 3(a)(4) and 3(a)(5) of the Act), any member of a national securities exchange, or any person associated with a broker or dealer (as defined in section 3(a)(18) of the Act), except for business entities controlling or under common control with the creditor.

Customer includes:

(1) Any person or persons acting jointly:

(i) To or for whom a creditor extends, arranges, or maintains any credit; or

(ii) who would be considered a customer of the creditor according to the ordinary usage of the trade;

(2) Any partner in a firm who would be considered a customer of the firm absent the partnership relationship; and

(3) Any joint venture in which a creditor participates and which would be considered a customer of the creditor if the creditor were not a participant.

Debit balance means the cash amount owed to the creditor in a margin account after debiting amounts transferred to the special memorandum account.

Delivery against payment, Payment against delivery, or a *C.O.D. transaction* refers to an arrangement under which a creditor and a customer agree that the creditor will deliver to, or accept from, the customer, or the customer's agent, a security against full payment of the purchase price.

Equity means the total current market value of security positions held in the margin account plus any credit balance less the debit balance in the margin account.

Escrow agreement means any agreement issued in connection with a call or put option under which a bank or any person designated as a control location under paragraph (c) of SEC Rule 15c3–3 (17 CFR 240.15c3–3(c)), holding the underlying asset or required cash or cash equivalents, is obligated to deliver to the creditor (in the case of a call option) or accept from the creditor (in the case of a put option) the underlying asset or required cash or cash equivalent against payment of the exercise price upon exercise of the call or put.

Examining authority means:

(1) The national securities exchange or national securities association of which a creditor is a member; or

(2) If a member of more than one self-regulatory organization, the organization designated by the SEC as the examining authority for the creditor.

Exempted securities mutual fund means any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), provided the company has at least 95 percent of its assets continuously invested in exempted securities (as defined in section 3(a)(12) of the Act).

Foreign margin stock means a foreign security that is an equity security and that appears on the Board's periodically published List of Foreign Margin Stocks.

Foreign person means a person other than a United States person as defined in section 7(f) of the Act.

Foreign security means a security issued in a jurisdiction other than the United States.

Good faith margin means the amount of margin which a creditor,exercising sound credit judgment, would customarily require for a specified security position and which is established without regard to the customer's other assets or securities positions held in connection with unrelated transactions.

In or at the money means, until June 1, 1997, the current market price of the underlying security is not more than one standard exercise interval below (with respect to a call option) or above (with respect to a put option) the exercise price of the option.

In the money means the current market price of the underlying asset or index is not below (with respect to a call option) or above (with respect to a put option) the exercise price of the option.

Margin call means a demand by a creditor to a customer for a deposit of additional cash or securities to eliminate or reduce a margin deficiency as required under this part.

Margin deficiency means the amount by which the required margin exceeds the equity in the margin account.

Margin excess means the amount by which the equity in the margin account exceeds the required margin. When the margin excess is represented by securities, the current value of the securities is subject to the percentages set forth in § 220.18 (the Supplement).

Margin security means:

(1) Any registered security;

(2) Any OTC margin stock;

(3) Any OTC margin bond;

(4) Any OTC security designated as qualified for trading in the National Market System under a designation plan approved by the Securities and Exchange Commission (NMS security);

(5) Any security issued by either an open-end investment company or unit investment trust which is registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8);

(6) Any foreign margin stock; or

(7) Any debt security convertible into a margin security.

Money market mutual fund means any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8) that is considered a money market fund under SEC Rule 2a–-7 (17 CFR 270.2a–7).

Nonexempted security means any security other than an exempted security (as defined in section 3(a)(12) of the Act).

Nonmember bank means a bank that is not a member of the Federal Reserve System.

Non-U.S. traded foreign security means a foreign security that is neither a registered security nor one listed on NASDAQ.

OTC margin bond means:

(1) A debt security not traded on a national securities exchange which meets all of the following requirements:

(i) At the time of the original issue, a principal amount of not less than $25,000,000 of the issue was outstanding;

(ii) The issue was registered under section 5 of the Securities Act of 1933 (15 U.S.C. 77e) and the issuer either files periodic reports pursuant to section 13(a) or 15(d) of the Act or is an insurance company which meets all of the conditions specified in section 12(g)(2)(G) of the Act; and

(iii) At the time of the extension of credit, the creditor has a reasonable basis for believing that the issuer is not in default on interest or principal payments; or

(2) A private pass-through security (not guaranteed by an agency of the U.S. government) meeting all of the following requirements:

(i) An aggregate principal amount of not less than $25,000,000 (which may be issued in series) was issued pursuant to a registration statement filed with the SEC under section 5 of the Securities Act of 1933 (15 U.S.C. 77e);

(ii) Current reports relating to the issue have been filed with the SEC; and

(iii) At the time of the credit extension, the creditor has a reasonable basis for believing that mortgage interest, principal payments and other distributions are being passed through as required and that the servicing agent is meeting its material obligations under the terms of the offering; or

(3) A mortgage related security as defined in section 3(a)(41) of the Act; or

(4) A debt security issued or guaranteed as a general obligation by the government of a foreign country, its provinces, states, or cities, or a supranational entity, if at the time of the extension of credit one of the following is rated in one of the two highest rating categories by a nationally recognized statistical rating organization:

(i) The issue;

(ii) The issuer or guarantor (implicitly); or

(iii) Other outstanding unsecured long-term debt securities issued or guaranteed by the government or entity; or

(5) A foreign security that is a nonconvertible debt security that meets all of the following requirements:

(i) At the time of original issue, a principal amount of at least $100,000,000 was outstanding;

(ii) At the time of the extension of credit, the creditor has a reasonable basis for believing that the issuer is not in default on interest or principal payments; and

(iii) At the time of the extension of credit, the issue is rated in one of the two highest rating categories by a nationally recognized statistical rating organization; or

(6) Any nonconvertible debt security that meets all of the following requirements:

(i) At the time of the extension of credit, the creditor has a reasonable basis for believing that the issuer is not in default on interest or principal payments; and

(ii) At the time of the extension of credit, the issue is rated in one of the four highest rating categories by a nationally recognized statistical rating organization.

OTC margin stock means any equity security traded over-the-counter that the Board has determined has the degree of national investor interest, the depth and breadth of market, the availability of information respecting the security and its issuer, and the character and permanence of the issuer to warrant being treated like an equity security traded on a national securities exchange. An OTC stock is not considered to be an OTC margin stock unless it appears on the Board's periodically published list of OTC margin stocks.

Overlying option means:

(1) A put option purchased or a call option written against a long position in an underlying asset in the specialist record in § 220.12(b); or

(2) A call option purchased or a put option written against a short position in an underlying asset in the specialist record in § 220.12(b).

Payment period means the number of business days in the standard securities settlement cycle in the United States, as defined in paragraph (a) of SEC Rule 15c6–1 (17 CFR 240.15c6–1(a)), plus two business days.

Permitted offset position means, in the case of an option in which a specialist makes a market, a position in the underlying asset or other related assets, and in the case of other securities in which a specialist makes a market, a position in options overlying the securities in which a specialist makes a market, provided the positions qualify as permitted offsets under the rules of the national securities exchange with which the specialist is registered, and further provided all such rules have been approved or amended by the SEC. Until June 1, 1997, permitted offsets are determined by reference to section 220.12(b)(6).

Purpose credit means credit for the purpose of:

(1) Buying, carrying, or trading in securities; or

(2) Buying or carrying any part of an investment contract security which shall be deemed credit for the purpose of buying or carrying the entire security.

Registered security means any security that:

(1) Is registered on a national securities exchange; or

(2) Has unlisted trading privileges on a national securities exchange.

Short call or short put means a call option or a put option that is issued, endorsed, or guaranteed in or for an account.

(1) A short call that is not cash-settled obligates the customer to sell the underlying asset at the exercise price upon receipt of a valid exercise notice or as otherwise required by the option contract.

(2) A short put that is not cash-settled obligates the customer to purchase the underlying asset at the exercise price upon receipt of a valid exercise notice

or as otherwise required by the option contract.

(3) A short call or a short put that is cash-settled obligates the customer to pay the holder of an in the money long put or long call who has, or has been deemed to have, exercised the option the cash difference between the exercise price and the current assigned value of the option as established by the option contract.

Specialist joint account means an account which, by written agreement, provides for the commingling of the security positions of the participants and a sharing of profits and losses from the account on some predetermined ratio.

Underlying asset means:

(1) the security or other asset that will be delivered upon exercise of an option; or

(2) In the case of a cash-settled option, the securities or other assets which comprise the index or other measure from which the option's value is derived.

§ 220.3 General provisions.

(a) *Records.* The creditor shall maintain a record for each account showing the full details of all transactions.

(b) *Separation of accounts.* Except as provided for in the margin account and the special memorandum account, the requirements of an account may not be met by considering items in any other account. If withdrawals of cash or securities are permitted under the regulation, written entries shall be made when cash or securities are used for purposes of meeting requirements in another account.

(c) *Maintenance of credit.* Except as prohibited by this part, any credit initially extended in compliance with this part may be maintained regardless of:

(1) Reductions in the customer's equity resulting from changes in market prices;

(2) Any security in an account ceasing to be margin or exempted; or

(3) Any change in the margin requirements prescribed under this part.

(d) *Guarantee of accounts.* No guarantee of a customer's account shall be given any effect for purposes of this part.

(e) *Receipt of funds or securities.* (1) A creditor, acting in good faith, may accept as immediate payment:

(i) Cash or any check, draft, or order payable on presentation; or

(ii) Any security with sight draft attached.

(2) A creditor may treat a security, check or draft as received upon written notification from another creditor that the specified security, check, or draft has been sent.

(3) Upon notification that a check, draft, or order has been dishonored or when securities have not been received within a reasonable time, the creditor shall take the action required by this part when payment or securities are not received on time.

(4) To temporarily finance a customer's receipt of securities pursuant to an employee benefit plan registered on SEC Form S–8 or the withholding taxes for an employee stock award plan, a creditor may accept, in lieu of the securities, a properly executed exercise notice, where applicable, and instructions to the issuer to deliver the stock to the creditor. Prior to acceptance, the creditor must verify that the issuer will deliver the securities promptly and the customer must designate the account into which the securities are to be deposited.

(f) *Exchange of securities.* (1) To enable a customer to participate in an offer to exchange securities which is made to all holders of an issue of securities, a creditor may submit for exchange any securities held in a margin account, without regard to the other provisions of this part, provided the consideration received is deposited into the account.

(2) If a nonmargin, nonexempted security is acquired in exchange for a margin security, its retention, withdrawal, or sale within 60 days following its acquisition shall be treated as if the security is a margin security.

(g) *Valuing securities.* The current market value of a security shall be determined as follows:

(1) Throughout the day of the purchase or sale of a security, the creditor shall use the security's total cost of purchase or the net proceeds of its sale including any commissions charged.

(2) At any other time, the creditor shall use the closing sale price of the security on the preceding business day, as shown by any regularly published reporting or quotation service. If there is no closing price, the creditor may use any reasonable estimate of the market value of the security as of the close of business on the preceding business day.

(h) *Innocent mistakes.* If any failure to comply with this part results from a mistake made in good faith in executing a transaction or calculating the amount of margin, the creditor shall not be deemed in violation of this part if, promptly after the discovery of the mistake, the creditor takes appropriate corrective action.

(i) *Foreign currency.* Freely convertible foreign currency may be treated at its U.S. dollar equivalent, provided the currency is marked-to-market daily.

§ 220.4 Margin account.

(a) *Margin transactions.* (1) All transactions not specifically authorized for inclusion in another account shall be recorded in the margin account.

(2) A creditor may establish separate margin accounts for the same person to:

(i) Clear transactions for other creditors where the transactions are introduced to the clearing creditor by separate creditors; or

(ii) Clear transactions through other creditors if the transactions are cleared by separate creditors; or

(iii) Provide one or more accounts over which the creditor or a third party investment adviser has investment discretion.

(b) *Required margin*—(1) *Applicability.* The required margin for each long or short position in securities is set forth in § 220.18 (the Supplement) and is subject to the following exceptions and special provisions.

(2) *Short sale against the box.* A short sale ''against the box'' shall be treated as a long sale for the purpose of computing the equity and the required margin.

(3) *When-issued securities.* The required margin on a net long or net short commitment in a when-issued security is the margin that would be required if the security were an issued margin security, plus any unrealized loss on the commitment or less any unrealized gain.

(4) *Stock used as cover.* (i) When a short position held in the account serves in lieu of the required margin for a short put, the amount prescribed by paragraph (b)(1) of this section as the amount to be added to the required margin in respect of short sales shall be increased by any unrealized loss on the position.

(ii) When a security held in the account serves in lieu of the required margin for a short call, the security shall be valued at no greater than the exercise price of the short call.

(5) *Accounts of partners.* If a partner of the creditor has a margin account with the creditor, the creditor shall disregard the partner's financial relations with the firm (as shown in the partner's capital and ordinary drawing accounts) in calculating the margin or equity of the partner's margin account.

(6) *Contribution to joint venture.* If a margin account is the account of a joint venture in which the creditor participates, any interest of the creditor in the joint account in excess of the

interest which the creditor would have on the basis of its right to share in the profits shall be treated as an extension of credit to the joint account and shall be margined as such.

(7) *Transfer of accounts.* (i) A margin account that is transferred from one creditor to another may be treated as if it had been maintained by the transferee from the date of its origin, if the transferee accepts, in good faith, a signed statement of the transferor (or, if that is not practicable, of the customer), that any margin call issued under this part has been satisfied.

(ii) A margin account that is transferred from one customer to another as part of a transaction, not undertaken to avoid the requirements of this part, may be treated as if it had been maintained for the transferee from the date of its origin, if the creditor accepts in good faith and keeps with the transferee account a signed statement of the transferor describing the circumstances for the transfer.

(8) *Credit denominated in foreign currency.* A creditor may extend credit denominated in any freely convertible foreign currency.

(9) *Options.* The following provisions are in force until June 1, 1997:

(i) *Margin or cover for options on exempted debt securities, certificates of deposit, stock indices, or securities exchange traded options on foreign currencies.* The required margin for each transaction involving any short put or short call on an exempted debt security, certificate of deposit, stock index, or foreign currency (if the option is traded on a securities exchange), shall be the amount or position in lieu of margin set forth in § 220.18 (the Supplement).

(ii) *Margin for options on equity securities.* The required margin for each transaction involving any short put or short call on an equity security shall be the amount set forth in § 220.18 (the Supplement).

(iii) *Cover or positions in lieu of margin.* No margin is required for an option written on an equity security position when the account holds any of the following:

(A) The underlying asset in the case of a short call, or a short position in the underlying asset in the case of a short put;

(B) Securities immediately convertible into or exchangeable for the underlying asset without the payment of money in the case of a short call, if the right to convert or exchange does not expire on or before the expiration date of the short call;

(C) An escrow agreement for the underlying security or foreign exchange (in the case of a short call) or cash (in the case of a short put);

(D) A long call on the same number of shares of the same underlying asset if the long call does not expire before the expiration date of the short call, and if the amount (if any), by which the exercise price of the long call exceeds the exercise price of the short call is deposited in the account;

(E) A long put on the same number of shares of the same underlying asset if the long put does not expire before the expiration date of the short put, and if the amount (if any), by which the exercise price of the short put exceeds the exercise price of the long put is deposited in the account;

(F) A warrant to purchase the underlying asset, in the case of a short call, if the warrant does not expire on or before the expiration date of the short call, and if the amount (if any), by which the exercise price of the short call is deposited in the account. A warrant used in lieu of the required margin under this provision shall contribute no equity to the account.

(iv) *Straddles.* When both a short put and a short call are in a margin account on the same number of shares of the same underlying security, the required margin shall be the margin on either the short put of the short call, whichever is greater, plus any unrealized loss on the other option.

(v) *Exclusive designation.* The customer may designate at the time the option order is entered which security position held in the account is to serve in lieu of the required margin, if such service is offered by the creditor; or the customer may have a standing agreement with the creditor as to the method to be used for determining on any given day which security position will be used in lieu of the margin to support an option transaction. Any security held in the account which serves in lieu of the required margin for a short put or a short call shall be unavailable to support any other option transaction in the account.

(c) *When additional margin is required*—(1) *Computing deficiency.* All transactions on the same day shall be combined to determine whether additional margin is required by the creditor. For the purpose of computing equity in an account, security positions are established or eliminated and a credit or debit created on the trade date of a security transaction. Additional margin is required on any day when the day's transactions create or increase a margin deficiency in the account and shall be for the amount of the margin deficiency so created or increased.

(2) *Satisfaction of deficiency.* The additional required margin may be satisfied by a transfer from the special memorandum account or by a deposit of cash, margin securities, exempted securities, or any combination thereof.

(3) *Time limits.* (i) A margin call shall be satisfied within one payment period after the margin deficiency was created or increased.

(ii) The payment period may be extended for one or more limited periods upon application by the creditor to its examining authority unless the examining authority believes that the creditor is not acting in good faith or that the creditor has not sufficiently determined that exceptional circumstances warrant such action. Applications shall be filed and acted upon prior to the end of the payment period or the expiration of any subsequent extension.

(4) *Satisfaction restriction.* Any transaction, position, or deposit that is used to satisfy one requirement under this part shall be unavailable to satisfy any other requirement.

(d) *Liquidation in lieu of deposit.* If any margin call is not met in full within the required time, the creditor shall liquidate securities sufficient to meet the margin call or to eliminate any margin deficiency existing on the day such liquidation is required, whichever is less. If the margin deficiency created or increased is $1000 or less, no action need be taken by the creditor.

(e) *Withdrawals of cash or securities.* (1) Cash or securities may be withdrawn from an account, except if:

(i) Additional cash or securities are required to be deposited into the account for a transaction on the same or a previous day; or

(ii) The withdrawal, together with other transactions, deposits, and withdrawals on the same day, would create or increase a margin deficiency.

(2) Margin excess may be withdrawn or may be transferred to the special memorandum account (§ 220.5) by making a single entry to that account which will represent a debit to the margin account and a credit to the special memorandum account.

(3) If a creditor does not receive a distribution of cash or securities which is payable with respect to any security in a margin account on the day it is payable and withdrawal would not be permitted under paragraph (e) of this section, a withdrawal transaction shall be deemed to have occurred on the day the distribution is payable.

(f) *Interest, service charges, etc.* (1) Without regard to the other provisions of this section, the creditor, in its usual practice, may debit the following items

to a margin account if they are considered in calculating the balance of such account:

(i) Interest charged on credit maintained in the margin account;

(ii) Premiums on securities borrowed in connection with short sales or to effect delivery;

(iii) Dividends, interest, or other distributions due on borrowed securities;

(iv) Communication or shipping charges with respect to transactions in the margin account; and

(v) Any other service charges which the creditor may impose.

(2) A creditor may permit interest, dividends, or other distributions credited to a margin account to be withdrawn from the account if:

(i) The withdrawal does not create or increase a margin deficiency in the account; or

(ii) The current market value of any securities withdrawn does not exceed 10 percent of the current market value of the security with respect to which they were distributed.

§ 220.5 Special memorandum account.

(a) A special memorandum account (SMA) may be maintained in conjunction with a margin account. A single entry amount may be used to represent both a credit to the SMA and a debit to the margin account. A transfer between the two accounts may be effected by an increase or reduction in the entry. When computing the equity in a margin account, the single entry amount shall be considered as a debit in the margin account. A payment to the customer or on the customer's behalf or a transfer to any of the customer's other accounts from the SMA reduces the single entry amount.

(b) The SMA may contain the following entries:

(1) Dividend and interest payments;

(2) Cash not required by this part, including cash deposited to meet a maintenance margin call or to meet any requirement of a self-regulatory organization that is not imposed by this part;

(3) Proceeds of a sale of securities or cash no longer required on any expired or liquidated security position that may be withdrawn under § 220.4(e); and

(4) Margin excess transferred from the margin account under § 220.4(e)(2).

§ 220.6 Government securities account.

In a government securities account, a creditor may effect and finance transactions involving government securities, provided the transaction is not prohibited by section 15C of the Act or any rule thereunder.

§ 220.7 Arbitrage account.

In an arbitrage account a creditor may effect and finance for any customer bona fide arbitrage transactions. For the purpose of this section, the term ''bona fide arbitrage'' means:

(a) A purchase or sale of a security in one market together with an offsetting sale or purchase of the same security in a different market at as nearly the same time as practicable for the purpose of taking advantage of a difference in prices in the two markets; or

(b) A purchase of a security which is, without restriction other then the payment of money, exchangeable or convertible within 90 calendar days of the purchase into a second security together with an offsetting sale of the second security at or about the same time, for the purpose of taking advantage of a concurrent disparity in the prices of the two securities.

§ 220.8 Cash account.

(a) *Permissible transactions.* In a cash account, a creditor, may:

(1) Buy for or sell to any customer any security or other asset if:

(i) There are sufficient funds in the account; or

(ii) The creditor accepts in good faith the customer's agreement that the customer will promptly make full cash payment for the security or asset before selling it and does not contemplate selling it prior to making such payment;

(2) Buy from or sell for any customer any security or other asset if:

(i) The security is held in the account; or

(ii) The creditor accepts in good faith the customer's statement that the security is owned by the customer or the customer's principal, and that it will be promptly deposited in the account;

(3) Issue, endorse, or guarantee, or sell an option for any customer as part of a covered option transaction; and

(4) Use an escrow agreement in lieu of the cash, cash equivalents or underlying asset position if:

(i) In the case of a short call or a short put, the creditor is advised by the customer that the required securities, assets or cash are held by a person authorized to issue an escrow agreement and the creditor independently verifies that the appropriate escrow agreement will be delivered by the person promptly; or

(ii) In the case of a call issued, endorsed, guaranteed, or sold on the same day the underlying asset is purchased in the account and the underlying asset is to be delivered to a person authorized to issue an escrow agreement, the creditor verifies that the appropriate escrow agreement will be delivered by the person promptly.

(b) *Time periods for payment; cancellation or liquidation*—(1) *Full cash payment.* A creditor shall obtain full cash payment for customer purchases—

(i) Within one payment period of the date:

(A) Any nonexempted security was purchased;

(B) Any when-issued security was made available by the issuer for delivery to purchasers;

(C) Any ''when distributed'' security was distributed under a published plan;

(D) A security owned by the customer has matured or has been redeemed and a new refunding security of the same issuer has been purchased by the customer, provided:

(*1*) The customer purchased the new security no more than 35 calendar days prior to the date of maturity or redemption of the old security;

(*2*) The customer is entitled to the proceeds of the redemption; and

(*3*) The delayed payment does not exceed 103 percent of the proceeds of the old security.

(ii) In the case of the purchase of a foreign security, within one payment period of the trade date or within one day after the date on which settlement is required to occur by the rules of the foreign securities market, provided this period does not exceed the maximum time permitted by this part for delivery against payment transactions.

(2) *Delivery against payment.* If a creditor purchases for or sells to a customer a security in a delivery against payment transaction, the creditor shall have up to 35 calendar days to obtain payment if delivery of the security is delayed due to the mechanics of the transaction and is not related to the customer's willingness or ability to pay.

(3) *Shipment of securities, extension.* If any shipment of securities is incidental to consummation of a transaction, a creditor may extend the payment period by the number of days required for shipment, but not by more than one additional payment period.

(4) *Cancellation; liquidation; minimum amount.* A creditor shall promptly cancel or otherwise liquidate a transaction or any part of a transaction for which the customer has not made full cash payment within the required time. A creditor may, at its option, disregard any sum due from the customer not exceeding $1000.

(c) *90 day freeze.* (1) If a nonexempted security in the account is sold or delivered to another broker or dealer without having been previously paid for in full by the customer, the privilege of

delaying payment beyond the trade date shall be withdrawn for 90 calendar days following the date of sale of the security. Cancellation of the transaction other than to correct an error shall constitute a sale.

(2) The 90 day freeze shall not apply if:

(i) Within the period specified in paragraph (b)(1) of this section, full payment is received or any check or draft in payment has cleared and the proceeds from the sale are not withdrawn prior to such payment or check clearance; or

(ii) The purchased security was delivered to another broker or dealer for deposit in a cash account which holds sufficient funds to pay for the security. The creditor may rely on a written statement accepted in good faith from the other broker or dealer that sufficient funds are held in the other cash account.

(d) *Extension of time periods; transfers.* (1) Unless the creditor's examining authority believes that the creditor is not acting in good faith or that the creditor has not sufficiently determined that exceptional circumstances warrant such action, it may upon application by the creditor:

(i) Extend any period specified in paragraph (b) of this section;

(ii) Authorize transfer to another account of any transaction involving the purchase of a margin or exempted security; or

(iii) Grant a waiver from the 90 day freeze.

(2) Applications shall be filed and acted upon prior to the end of the payment period, or in the case of the purchase of a foreign security within the period specified in paragraph (b)(1)(ii) of this section, or the expiration of any subsequent extension.

§ 220.9 Nonsecurities credit and employee stock ownership account.

(a) In a nonsecurities credit account a creditor may:

(1) Effect and carry transactions in commodities;

(2) Effect and carry transactions in foreign exchange;

(3) Extend and maintain secured or unsecured nonpurpose credit, subject to the requirements of paragraph (b) of this section; and

(4) Extend and maintain credit to employee stock ownership plans without regard to the other sections of this part.

(b) Every extension of credit, except as provided in paragraphs (a)(1) and (a)(2) of this section, shall be deemed to be purpose credit unless, prior to extending the credit, the creditor accepts in good faith from the customer a written statement that it is not purpose credit. The statement shall conform to the requirements established by the Board. To accept the customer's statement in good faith, the creditor shall be aware of the circumstances surrounding the extension of credit and shall be satisfied that the statement is truthful.

§ 220.10 Omnibus account.

(a) In an omnibus account, a creditor may effect and finance transactions for a broker or dealer who is registered with the SEC under section 15 of the Act and who gives the creditor written notice that:

(1) All securities will be for the account of customers of the broker or dealer; and

(2) Any short sales effected will be short sales made on behalf of the customers of the broker or dealer other than partners.

(b) The written notice required by paragraph (a) of this section shall conform to any SEC rule on the hypothecation of customers' securities by brokers or dealers.

§ 220.11 Broker-dealer credit account.

(a) *Permissible transactions.* In a broker-dealer credit account, a creditor may:

(1) Purchase any security from or sell any security to another creditor or person regulated by a foreign securities authority under a good faith agreement to promptly deliver the security against full payment of the purchase price.

(2) Effect or finance transactions of any of its owners if the creditor is a clearing and servicing broker or dealer owned jointly or individually by other creditors.

(3) Extend and maintain credit to any partner or stockholder of the creditor for the purpose of making a capital contribution to, or purchasing stock of, the creditor, affiliated corporation or another creditor.

(4) Extend and maintain, with the approval of the appropriate examining authority:

(i) Credit to meet the emergency needs of any creditor; or

(ii) Subordinated credit to another creditor for capital purposes, if the other creditor:

(A) Is an affiliated corporation or would not be considered a customer of the lender apart from the subordinated loan; or

(B) Will not use the proceeds of the loan to increase the amount of dealing in securities for the account of the creditor, its firm or corporation or an affiliated corporation.

(5) Effect transactions for a customer as part of a ''prime broker'' arrangement in conformity with SEC guidelines.

(b) *Affiliated corporations.* For purposes of paragraphs (a)(3) and (a)(4) of this section ''affiliated corporation'' means a corporation all the common stock of which is owned directly or indirectly by the firm or general partners and employees of the firm, or by the corporation or holders of the controlling stock and employees of the corporation and the affiliation has been approved by the creditor's examining authority.

§ 220.12 Market functions account.

(a) *Requirements.* In a market functions account, a creditor may effect or finance the transactions of market participants in accordance with the following provisions. A separate record shall be kept for the transactions specified for each category described in paragraphs (b) through (e) of this section. Any position in a separate record shall not be used to meet the requirements of any other category.

(b) *Specialists.*—(1) *Applicability.* A creditor may clear or finance specialist transactions and permitted offset positions for any specialist, or any specialist joint account, in which all participants, or all participants other than the creditor, are registered as specialists on a national securities exchange that requires regular reports on the use of specialist credit from the registered specialists.

(2) *Required margin.* The required margin for a specialist's transactions shall be:

(i) Good faith margin for:

(A) Any long or short position in a security in which the specialist makes a market;

(B) Any wholly-owned margin security or exempted security; or

(C) Any permitted offset position.

(ii) The margin prescribed by § 220.18 (the Supplement) when a security purchased or sold short in the account does not qualify as a specialist or permitted offset position.

(3) *Additional margin; restriction on ''free-riding.''* (i) Except as required by paragraph (b)(4) of this section, the creditor shall issue a margin call on any day when additional margin is required as a result of specialist transactions. The creditor may allow the specialist a maximum of one payment period to satisfy a margin call.

(ii) If a specialist fails to satisfy a margin call within the period specified in paragraph (b)(3) of this section (and the creditor is required to liquidate securities to satisfy the call), the creditor shall be prohibited for a 15 calendar day

period from extending any further credit to the specialist to finance transactions in nonspecialty securities.

(iii) The restriction on ''free-riding'' shall not apply to:

(A) Any specialist on a national securities exchange that has an SEC-approved rule on ''free-riding'' by specialists; or

(B) the acquisition or liquidation of a permitted offset position.

(4) *Deficit status*. On any day when a specialist's separate record would liquidate to a deficit, the creditor shall not extend any further specialist credit in the account and shall issue a margin call at least as large as the deficit. If the call is not met by noon of the following business day, the creditor shall liquidate positions in the specialist's account.

(5) *Withdrawals*. Withdrawals may be permitted to the extent that the equity exceeds the margin requirements specified in paragraph (b)(2) of this section.

(6) *Permitted offset positions*. Until June 1, 1997, a specialist in options may establish, on a share-for-share basis, a long or short position in the securities underlying the options in which the specialist makes a market, and a specialist in securities other than options may purchase or write options overlying the securities in which the specialist makes a market, if the account holds the following permitted offset positions:

(i) A short option position which is ''in or at the money'' and is not offset by a long or short option position for an equal or greater number of shares of the same underlying security which is ''in the money'';

(ii) A long option position which is ''in or at the money'' and is not offset by a long or short option position for an equal or greater number of shares of the same underlying security which is ''in the money'';

(iii) A short option position against which an exercise notice was tendered;

(iv) A long option position which was exercised;

(v) A net long position in a security (other than an option) in which the specialist makes a market; or

(vi) A net short position in a security (other than an option) in which the specialist makes a market.

(c) *Underwriters and distributors*. A creditor may effect or finance for any dealer or group of dealers transactions for the purpose of facilitating the underwriting or distribution of all or a part of an issue of securities with a good faith margin.

(d) *OTC marketmakers and third marketmakers*. (1) A creditor may clear or finance with a good faith margin, marketmaking transactions for a creditor who is a registered NASDAQ marketmaker or a qualified third marketmaker as defined in SEC Rule 3b–8 (17 CFR 240.3b-8).

(2) If the credit extended to a marketmaker ceases to be for the purpose of marketmaking, or the dealer ceases to be a marketmaker for an issue of securities for which credit was extended, the credit shall be subject to the margin specified in § 220.18 (the Supplement).

(e) *Odd-lot dealers*. A creditor may clear and finance odd-lot transactions for any creditor who is registered as an odd-lot dealer on a national securities exchange with a good faith margin.

§ 220.13 Arranging for loans by others.

A creditor may arrange for the extension or maintenance of credit to or for any customer by any person, provided the creditor does not willfully arrange credit that violates parts 207, 221, or 224 of this chapter.

§ 220.14 Clearance of securities, options, and futures.

(a) *Credit for clearance of securities*. The provisions of this part shall not apply to the extension or maintenance of any credit that is not for more than one day if it is incidental to the clearance of transactions in securities directly between members of a national securities exchange or association or through any clearing agency registered with the SEC.

(b) *Deposit of securities with a clearing agency*. The provisions of this part shall not apply to the deposit of securities with an options or futures clearing agency for the purpose of meeting the deposit requirements of the agency if:

(1) The clearing agency:

(i) Issues, guarantees performance on, or clears transactions in, any security (including options on any security, certificate of deposit, securities index or foreign currency); or

(ii) Guarantees performance of contracts for the purchase or sale of a commodity for future delivery or options on such contracts;

(2) The clearing agency is registered with the Securities and Exchange Commission or is the clearing agency for a contract market regulated by the Commodity Futures Trading Commission; and

(3) The deposit consists of any margin security and complies with the rules of the clearing agency that have been approved by the Securities and Exchange Commission or the Commodity Futures Trading Commission.

§ 220.15 Borrowing by creditors.

(a) *Restrictions on borrowing*. A creditor may not borrow in the ordinary course of business as a broker or dealer using as collateral any registered nonexempted security, except:

(1) From or through a member bank of the Federal Reserve System; or

(2) From any nonmember bank that has filed with the Board an agreement as prescribed in paragraph (b) of this section, which agreement is still in effect; or

(3) From another creditor if the loan is permissible under this part.

(b) *Agreements of nonmember banks*. (1) A nonmember bank shall file an agreement that conforms to the requirements of section 8(a) of the Act (See Form FR T–1, T–2).

(2) Any nonmember bank may terminate its agreement if it obtains the written consent of the Board.

§ 220.16 Borrowing and lending securities.

(a) Without regard to the other provisions of this part, a creditor may borrow or lend securities for the purpose of making delivery of the securities in the case of short sales, failure to receive securities required to be delivered, or other similar situations. Each borrowing shall be secured by a deposit of one or more of the following: cash, cash equivalents, foreign sovereign nonconvertible debt securities that are margin securities, collateral acceptable for borrowings of securities pursuant to SEC Rule 15c3–3 (17 CFR 240.15c3–3), or irrevocable letters of credit issued by a bank insured by the Federal Deposit Insurance Corporation or a foreign bank that has filed an agreement with the Board on Form FR T–1, T–2. Such deposit made with the lender of the securities shall have at all times a value at least equal to 100 percent of the market value of the securities borrowed, computed as of the close of the preceding business day. If a creditor reasonably anticipates a short sale, such borrowing may be made up to one standard settlement cycle in advance of trade date.

(b) A creditor may lend non-U.S. traded foreign securities to a foreign person (or borrow such securities for the purpose of relending them to a foreign person) for any purpose lawful in the country in which they are to be used. Each borrowing shall be secured with collateral having at all times a value at least equal to 100 percent of the market value of the securities borrowed, computed as of the close of the preceding business day.

§ 220.17 Requirements for the list of marginable OTC stocks and the list of foreign margin stocks.

(a) *Requirements for inclusion on the list of marginable OTC stocks.* Except as provided in paragraph (f) of this section, OTC margin stock shall meet the following requirements:

(1) Four or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such stock, as determined by the Board, is at least $5 per share;

(3) The stock is registered under section 12 of the Act, is issued by an insurance company subject to section 12(g)(2)(G) of the Act, is issued by a closed-end investment management company subject to registration pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), is an American Depository Receipt (ADR) of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of an issuer required to file reports under section 15(d) of the Act;

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public;

(5) The stock has been publicly traded for at least six months;

(6) The issuer has at least $4 million of capital, surplus, and undivided profits;

(7) There are 400,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors or beneficial owners of more than 10 percent of the stock;

(8) There are 1,200 or more holders of record, as defined in SEC Rule 12g5–1 (17 CFR 240.12g5–1), of the stock who are not officers, directors or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such stock as determined by the Board, is at least 500 shares; and

(9) The issuer or a predecessor in interest has been in existence for at least three years.

(b) *Requirements for continued inclusion on the list of marginable OTC stocks.* Except as provided in paragraph (f) of this section, OTC margin stock shall meet the following requirements:

(1) Three or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such stocks, as determined by the Board, is at least $2 per share;

(3) The stock is registered as specified in paragraph (a)(3) of this section;

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public;

(5) The issuer has at least $1 million of capital, surplus, and undivided profits;

(6) There are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock; and

(7) There continue to be 800 or more holders of record, as defined in SEC Rule 12g5–1 (17 CFR 240.12g5–1), of the stock who are not officers, directors, or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such stock, as determined by the Board, is at least 300 shares.

(c) *Requirements for inclusion on the list of foreign margin stocks.* Except as provided in paragraph (f) of this section, a foreign margin stock shall be a foreign security deemed to have a ''ready market'' for purposes of SEC Rule 15c3–1 (17 CFR 240.15c3–1) or meet the following requirements:

(1) The security is listed for trading on or through the facilities of a foreign securities exchange or a recognized foreign securities market and has been trading on such exchange or market for at least six months;

(2) Daily quotations for both bid and asked or last sale prices for the security provided by the foreign securities exchange or foreign securities market on which the security is traded are continuously available to creditors in the United States pursuant to an electronic quotation system;

(3) The aggregate market value of shares, the ownership of which is unrestricted, is not less than $1 billion;

(4) The average weekly trading volume of such security during the preceding six months is either at least 200,000 shares or $1 million; and

(5) The issuer or a predecessor in interest has been in existence for at least five years.

(d) *Requirements for continued inclusion on the list of foreign margin stocks.* Except as provided in paragraph (f) of this section, a foreign margin stock shall be a foreign security deemed to have a ''ready market'' for purposes of SEC Rule 15c3–1 (17 CFR 240.15c3–1) or meet the following requirements:

(1) The security continues to meet the requirements specified in paragraphs (c)(1) and (2) of this section;

(2) The aggregate market value of shares, the ownership of which is unrestricted, is not less than $500 million; and

(3) The average weekly trading volume of such security during the preceding six months is either at least 100,000 shares or $500,000.

(e) *Removal from the lists.* The Board shall periodically remove from the lists any stock that:

(1) Ceases to exist or of which the issuer ceases to exist; or

(2) No longer substantially meets the provisions of paragraph (b) or (d) of this section or the definition of OTC margin stock.

(f) *Discretionary authority of Board.* Without regard to other paragraphs of this section, the Board may add to, or omit or remove from the list of marginable OTC stocks and the list of foreign margin stocks and equity security, if in the judgment of the Board, such action is necessary or appropriate in the public interest.

(g) *Unlawful representations.* It shall be unlawful for any creditor to make,or cause to be made, any representation to the effect that the inclusion of a security on the list of marginable OTC stocks or the list of foreign margin stocks is evidence that the Board or the SEC has in any way passed upon the merits of, or given approval to, such security or any transactions therein. Any statement in an advertisement or other similar communication containing a reference to the Board in connection with the lists or stocks on those lists shall be an unlawful representation.

§ 220.18 Supplement: Margin requirements.

The required margin for each security position held in a margin account shall be as follows:

(a) Margin equity security, except for an exempted security, money market mutual fund or exempted securities mutual fund, warrant on a securities index or foreign currency or a long position in an option: 50 percent of the current market value of the security or the percentage set by the regulatory authority where the trade occurs, whichever is greater.

(b) Exempted security, registered nonconvertible debt security, OTC margin bond, money market mutual fund or exempted securities mutual fund: The margin required by the creditor in good faith or the percentage set by the regulatory authority where the trade occurs, whichever is greater.

(c) Short sale of a nonexempted security, except for a registered nonconvertible debt security or OTC margin bond: 150 percent of the current

market value of the security, or 100 percent of the current market value if a security exchangeable or convertible within 90 calendar days without restriction other than the payment of money into the security sold short is held in the account.

(d) Short sale of an exempted security, registered nonconvertible debt security or OTC margin bond: 100 percent of the current market value of the security plus the margin required by the creditor in good faith.

(e) Nonmargin, nonexempted security: 100 percent of the current market value.

(f) Put or call on a security, certificate of deposit, securities index or foreign currency or a warrant on a securities index or foreign currency:

(1) In the case of puts and calls issued by a registered clearing corporation and listed or traded on a registered national securities exchange or a registered securities association and registered warrants on a securities index or foreign currency, the amount, or other position (except in the case of an option on an equity security until June 1, 1997), specified by the rules of the registered national securities exchange or the registered securities association authorized to trade the option or warrant, provided that all such rules have been approved or amended by the SEC; or

(2) In the case of all other puts and calls, the amount, or other position, specified by the maintenance rules of the creditor's examining authority.

§ 220.19 [Removed]

3. Section 220.19 is removed.

§§ 220.106, 220.107, 220.109, 220.112, 220.114–220.116, 220.120, 220.125, 220.129, 220.130 [Removed]

Interpretations

4. The following sections are removed and reserved: 220.106, 220.107, 220.109, 220.112, 220.114, 220.115, 220.116, 220.120, 220.125, 220.129, and 220.130.

By order of the Board of Governors of the Federal Reserve System, April 24, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–10607 Filed 5–3–96; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, and 221

[Regulations G, T, and U; Docket No. R–0923]

Securities Credit Transactions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: In conjunction with a final rule printed elsewhere in today's Federal Register, the Board is considering further amendments to its margin regulations, Regulations G, T, and U. Regulation T covers extensions of credit by and to brokers and dealers; Regulation U covers extensions of credit by banks; and Regulation G covers extensions of credit by all other U.S. lenders.

The Board is proposing to: allow a broker-dealer to extend ''good faith'' credit on any non-equity security rather than only those currently permitted by Board rules; allow lending on non-equity securities to occur in a new ''non-equity'' account, absent the restrictions currently imposed in the margin account; remove restrictions on the ability of broker-dealers to calculate required margin for non-equity securities on a ''portfolio'' basis; ease or eliminate the Board's collateral requirements for the borrowing and lending of securities; exempt lending to foreign persons on foreign securities by foreign branches of U.S. broker dealers; remove a Board interpretation that prevents options from serving as cover in lieu of margin for a short sale; and allow banks to lend against exchange-traded options to the extent permitted by the exchange listing the option.

The Board is also seeking comment on whether it should expand the number of equity securities eligible for loan value under Regulation T, and on whether it should amend Regulations G and U to modify their method for determining which equity securities are eligible for loan value.

DATES: Comments should be received on or before July 1, 1996.

ADDRESSES: Comments should refer to Docket No. R–0923, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Comments also may be delivered to Room B–222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street NW. (between Constitution Avenue and C Street NW.) at any time. Comments received will be available for inspection in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Scott Holz, Senior Attorney, or Angela Desmond, Senior Counsel, Division of Banking Supervision and Regulation (202) 452–2781; Oliver Ireland, Associate General Counsel (202) 452–3625 or Gregory Baer, Managing Senior Counsel (202) 452–3236, Legal Division; for the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202) 452–3544.

SUPPLEMENTARY INFORMATION: Regulation T implements the Board's authority over securities credit extended by broker-dealers under section 7 of the Securities Exchange Act of 1934, 15 U.S.C. 78g (the Act). Section 7 requires the Board to regulate the amount of credit that may be extended on securities by a broker-dealer, requires that collateral for securities purchases consist of ''exempted securities'' (U.S. government and municipal securities) or securities assigned loan value by the Board, and prohibits a broker-dealer from extending unsecured credit for the purpose of purchasing securities. Regulation T establishes the margin that a customer of a broker-dealer must post when engaging in a securities transaction on credit. The ''margin'' for a security is the converse of the security's ''loan value;'' by definition, the two always add up to 100 percent.

Section 7 also authorizes the Board to regulate credit extended by banks and all other U.S. lenders. Regulation U limits credit extended by banks to finance the purchase or carrying by customers of margin equity securities when the credit is collateralized by such securities. 12 CFR Part 221. Regulation G limits credit extended by lenders other than broker-dealers and banks to finance the purchase or carrying of margin equity securities when the credit is collateralized by such securities. 12 CFR Part 207.[1]

In 1995, the Board published for comment a series of amendments to Regulation T that were intended to remove constraints that were hampering developing trends in the securities markets. 60 FR 33763, June 29, 1995. These trends included the erosion of barriers between broker-dealers and other lenders, the globalization of securities markets, the increasing overlap in the businesses of various lenders, and the constant development of new mechanisms for extending securities credit. The Board also solicited comment on broader changes that could be made to Regulation T. The recent effort to modernize Regulation T predated but is now encompassed within the Board's regulatory review under section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325.

Extensive comment was received on the Board's 1995 proposal, including voluminous responses from the major securities trade groups. Commenters generally supported the proposed amendments to Regulation T, but also emphasized the need for more wholesale reform.

Today, the Board is elsewhere adopting as a final rule many of the amendments it proposed in 1995. However, the Board is also proposing additional amendments to Regulation T, and seeking comment on provisions of Regulations G and U as well.[2] In addition, the Board seeks comment on any other steps it can take to reduce the burden imposed by Regulation T, including any steps to reduce the accounting and recordkeeping burdens of the regulation, that would be consistent with the purposes and requirements of the Act.

1. Good Faith Loan Value for all Non-Equity Securities

Regulation T gives ''good faith'' loan value to many but not all debt securities. Good faith loan value means that a broker-dealer may extend credit on a particular security in any amount consistent with sound credit judgment. 12 CFR 220.2. Those debt securities not eligible for good faith loan value receive no loan value and therefore have a margin requirement of 100 percent.

With the adoption of today's final rule, the Board currently assigns a debt security good faith loan value if it is: (1) listed on a U.S. securities exchange, (2) a government or municipal security, (3) an investment grade security; or (4) a less-than-investment grade security that is registered with the Securities and Exchange Commission (SEC) and has an original principal amount of not less than $25,000,000. 12 CFR 220.18(b).

[1] Regulation X covers U.S. borrowers obtaining credit outside the United States. Because Regulation X incorporates the requirements of Regulation T, U, or G (depending on the lender), any amendments to those regulations automatically pass through to Regulation X. Therefore, no amendments to Regulation X are being proposed.

[2] The Board is also continuing to review Regulations G and U as part of its ongoing effort to reduce regulatory burden, as mandated by section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994.

Non-equity securities that are not registered, are not government or municipal securities, and are not investment grade generally will continue to receive no loan value under Regulation T.

In contrast, the Board's Regulations G and U do not impose any margin restrictions on non-broker-dealer lenders (such as banks) when they lend against non-equity securities, even securities that receive no loan value under Regulation T.[3] Foreign broker-dealers and other foreign lenders, with whom U.S. broker dealers increasingly compete worldwide, are generally also unconstrained. Thus, customers who wish to borrow against non-equity securities that receive no loan value under Regulation T, and investors who wish to engage in repo or forward transactions in such securities, may go to these other lenders.

The Board proposes to grant good faith loan value to all non-equity securities. To effectuate this change, the Board is proposing to amend revised section 220.13, discussed below, and section 220.18 (b), (c), and (d) to include all non-equity securities among those securities subject to good faith margin. A new definition of ''non-equity security'' would be added to section 220.2 to include any security that is not an ''equity security'' for purposes of section 3(a)(11) of the Act. This definition of non-equity security may include certain equity-linked securities. The Board seeks comment on whether it should modify the definition of non-equity security to exclude equity-linked securities and, if so, what securities should be excluded.

In a conforming change, the definition of ''OTC margin bond'' in section 220.2 would be deleted; since all non-equity securities would receive loan value, this definition would no longer be required. In another conforming change, the definition of ''margin security'' in section 220.2 would be revised to include any ''non-equity security'' instead of any ''OTC margin bond.''

Expanding the types of non-equity securities eligible for good faith loan value should expand broker-dealers' ability to lend and put them on a more equal footing with other lenders under Regulations G and U. Broker-dealers should be no less competent to determine the loan value of non-investment grade debt securities than a bank or other lender would be. Finally, any remaining regulatory concerns could be addressed by the self-regulatory organizations (SROs), which include the exchanges and the National Association of Securities Dealers, who still would be able to set their own margin requirements for these transactions.

2. Establishment of Non-Equity Account

Other restrictions beyond margin requirements are also currently placed on transactions involving non-equity securities. Currently, any credit extended by a broker-dealer on a non-equity security (other than a security eligible for the government securities account) must be recorded in the margin account. 12 CFR 220.4. These transactions are thus subject to the same restrictions as equity securities with respect to when payments must be made and when positions must be liquidated. On the other hand, because Regulations U and G restrict lending only on equity securities, banks and other lenders may lend on non-equity securities without such Board-imposed restrictions. 12 CFR 221.3(a); 12 CFR 207.3(b).

The Board proposes to allow any transaction involving a non-equity security to be effected in a new ''non-equity'' account. For example, a customer could effect in this account: (1) purchases of non-equity securities on credit; (2) repurchase and reverse repurchase agreements with broker-dealers on non-equity securities; and (3) the purchase or sale of options on non-equity securities. All transactions in the account would be subject to good faith margin. In order to ensure that unsecured credit would not be extended under the rubric of good faith margin, the proposed rule would prohibit any transaction or withdrawal that would cause the non-equity account to liquidate to a deficit—that is, cause the marked-to-market value of the securities held in the account to be less than the credit outstanding.

This account would be otherwise unregulated. The absence of restrictions on the terms of credit for non-equity securities would promote equality of treatment between broker-dealers and banks and other lenders, who face no Federal Reserve regulation when they lend on non-equity securities.

The Board seeks comment on whether the creation of a non-equity account would be beneficial and whether the account could be better named. The Board also seeks comment on whether this account could be merged with the government securities account (12 CFR 220.6) or the nonsecurities credit account (220.9) or both.

3. Portfolio Margining

A. Amendment to definition of good faith margin

As noted above, Regulation T currently allows good faith margin on some non-equity securities, and the Board is proposing to extend this treatment to all non-equity securities. ''Good faith margin'' is defined in Regulation T to mean ''the amount of margin which a creditor, exercising sound credit judgment, would customarily require for a *specified security position* and which is *established without regard to the customer's other assets or securities positions held in connection with unrelated transactions*'' (emphasis added). 12 CFR 220.2.

This definition limits so-called ''portfolio margining''—allowing positions to be evaluated as a group and determining collateral requirements based upon estimated changes in the value of that portfolio. (It would continue to do so even if the proposed non-equity account were adopted, as the definition of good faith applies regardless of where the transaction is booked.) Regulation T has defined limited positions that can serve as offsets for each other, but any combination of positions not specifically permitted by the regulation may not offset one another. Commenters have for some time requested greater flexibility to engage in cross-margining (allowing positions in financial futures to offset the margin required for a given securities credit) and more broadly in ''portfolio'' or ''risk-based'' margining.

In order to remove an impediment to portfolio margining, the Board would amend the definition of ''good faith margin'' to eliminate the requirement that such margin be calculated ''for a specified security position * * * without regard to the customer's other assets or securities positions held in connection with unrelated transactions.'' Instead, ''good faith margin'' would be defined to mean ''the amount of margin the creditor would require in exercising sound credit judgment.''

The Board is seeking comment on whether this definition should: (1) apply only in the proposed non-equity account, thereby continuing to limit portfolio margining of securities eligible for good faith margin in the margin account or market functions account; or (2) apply regardless of the account—margin, non-equity, or market functions—in which the transactions are booked. In addition, the Board seeks comment on the extent to which this change would allow SROs and broker-

[3] Section 7(d) of the Act prohibits the Board from establishing margin requirements on non-equity securities at banks. 15 U.S.C. 78g(d). When Regulation G was adopted in 1968, it was modeled on Regulation U.

dealers greater flexibility to develop portfolio margining systems. The Board also seeks comment from SROs and others on the potential benefits and burdens of adopting a portfolio margining system in addition to the existing position-based system, and whether changing the definition of good faith margin for any or all accounts is consistent with section 7(b) of the Act.

B. Separation of Accounts

Section 7 of the Act prohibits a broker-dealer from extending securities credit on any collateral other than a security. Accordingly, Regulation T requires that futures contracts and non-securities be accounted for in their own account, and section 220.3(b) of Regulation T generally prohibits using items in one account (including the nonsecurities account) from being used to meet the margin requirements for items in another account (including the margin account). However, with adoption of today's final rule, Regulation T will allow financial futures to serve in lieu of margin for securities options consistent with SRO rules. This treatment is consistent with Section 7 because the broker-dealer is not extending credit on the futures contract when it considers a futures contract in determining the amount of credit it can extend in good faith on a security.

The proposed rule would amend section 220.3(b) to allow explicitly commodities and foreign exchange positions in the nonsecurities account to be considered in calculating margin for *any* securities transaction in the proposed non-equity account or the margin account. The Board would expect that these positions would be valued in accordance with SRO rules, where applicable, or in any event not in excess of their marked-to market value. The proposed rule would also amend section 220.18 to remove a requirement that margin be held for ''each security position.''

The Board also seeks comment on whether further amendments to sections 220.3(b) should be adopted to facilitate portfolio margining—in particular, whether the Board should modify the general prohibition on separation of accounts in section 220.3(b). Doing so could allow any excess margin in one account to be used to meet a margin deficiency in another account. To the extent that such a change were adopted, the Board seeks comment on the continuing need for a Special Memorandum Account. As noted above, the Board is also seeking comment on whether the government securities account, nonsecurities account, and proposed non-equity account should be combined.

C. Implementation

The Board also seeks comment on any implementation problems that might arise with a partial or complete move to portfolio margining, including the need for delaying the effective date of any final rule in order to allow the SROs time to amend their rules.

4. Borrowing and Lending of Securities by Brokers-dealers

In order to facilitate short sales and the curing of failures to deliver a security (fails), Regulation T allows broker-dealers to borrow and lend securities outside of the normal margin requirements for securities purchases. To qualify for this treatment, borrowing and lending transactions must not only relate to a short sale or fail but also be secured by cash or similarly liquid collateral equal to 100 percent of the value of the securities lent.[4] Any borrowing and lending of securities that does not meet both the ''purpose test'' and the ''collateral test'' is usually a financing, is not considered a borrowing and lending of securities for Regulation T purposes, and therefore is conducted in a margin account, subject to the appropriate margin requirement for the underlying security.

Requiring 100 percent collateral (marked to market daily) to secure any stock loan reflects industry practice and is, the Board believes, consistent with prudent securities lending. The SEC imposes similar requirements on the types and amount of collateral a broker-dealer must post when it borrows securities from a customer, and the Department of Labor applies similar requirements to an ERISA pension plan when it lends securities.

Nonetheless, the Board is seeking comment on whether the Board's existing collateral requirements are necessary for Regulation T purposes. Commenters have sought an expansion of eligible collateral to include all securities marginable under Regulation T. Although the Board has expressed concern that Regulation T could be evaded by structuring a financing transaction as a borrowing and lending,[5] the purpose test may be adequate to prevent such an evasion. The purpose test limits the exception to transactions that have a clear market purpose that is verifiable (as any evasion becomes evident within a few days, when no short sale is consummated or the fail proves illusory). The collateral test addresses the evasion issue only indirectly by imposing collateral arrangements that conform to industry practice.

Accordingly, the Board is proposing to amend section 220.16 either to allow any security that qualifies for loan value to serve as collateral, valued at its regulatory loan value,[6] or to require a *bona fide* posting of collateral equal to 100 percent of the value of the securities borrowed, without requiring any specific type of collateral. The Board also seeks comment on whether the collateral requirement of section 220.16 could be eliminated altogether. The Board notes that even if the collateral/requirements were eliminated, other concerns might merit continued or further regulation by the SROs or the SEC.

5. Extensions of Credit by Foreign Branches of U.S. Broker-Dealers

Most U.S. broker-dealers conduct their overseas operations through separately incorporated subsidiaries of their holding companies. These subsidiaries are not subject to Regulation T or SEC regulations. However, a few firms maintain foreign branches that are subject to Regulation T. The Board is proposing to exclude these foreign branches from Regulation T when they extend credit to foreign persons on foreign securities. This would be analogous to the exclusion from Regulation U of foreign branches of U.S. banks when they extend securities credit.

6. Option as Cover for a Short Sale of an Equity Security

In a short sale, a customer generally sells securities it does not own and borrows those securities from a broker-dealer in order to meet its delivery obligation. The customer is then obligated to redeliver such securities to the broker-dealer at some time in the future, but hopes to obtain those securities for less than the sale price less financing costs. Regulation T currently

[4] With the adoption of today's final rule, permissible types of collateral include cash, securities issued or guaranteed by the United States or its agencies, certain negotiable bank certificates of deposit and bankers acceptances, and certain irrevocable letters of credit issued by banks, marginable foreign sovereign debt securities, and any collateral acceptable to the SEC when a broker-dealer borrows securities from a customer.

[5] For example, a broker-dealer prohibited by Regulation T from extending a customer 100 percent credit on a security could instead borrow the security from the customer and post 100 percent cash collateral; the customer could then withdraw the cash, evading the 50 percent initial or good faith margin requirement.

[6] If this option were adopted, ''loan value'' would be defined in Regulation T to mean an amount equal to ''1 minus the margin requirement for the security under this part.''

requires margin of 150 percent for a short sale of an equity security.[7] For example, if a customer sells short 100 shares of XYZ Corp, the broker-dealer retains 100 percent of the proceeds from the sale in the customer's account, and the customer is required to post an additional 50 percent of the sale price. (This parallels the 50 percent margin requirement for a purchase of the stock; in each case, the customer's stake in the transaction must be 50 percent of its price.) However, Regulation T requires margin of only 100 percent—in other words, allows retaining of the proceeds of the sale to suffice—if a ''security exchangeable or convertible * * * into the security sold short'' is held in the customer's account. The most common example of such a security is a convertible bond.

Although it can be argued that both stock warrants and call options qualify as a ''security exchangeable or convertible into another security,'' the Board has only permitted the former to serve in lieu of the additional 50 percent margin for short sales in Regulation T. *See* Board Interpretation 12 CFR 220.126, reprinted in the *Federal Reserve Regulatory Service* at 5–488. Some commenters have criticized this inequality of treatment, and some have asked that a call option—in the above example, a call option for 100 shares of XYZ stock—be allowed to serve in lieu of the additional 50 percent margin requirement.

The Board is seeking comment on whether to allow the use of a call option to offset the short sale of a security and whether doing so would bias the market in favor of short selling. The Board has historically sought to ensure that traders on the short side of the market should not be in a position, with a given amount of funds, to exert greater influence on the market than they could with the same amount of funds if they were trading on the long side. However, under this proposal, a customer wishing to purchase 100 shares of XYZ would be required to come up with 50 percent of the purchase price, but a customer wishing to sell 100 shares of XYZ short would only be required to come up with the premium necessary to purchase a call option for 100 shares of XYZ, a far smaller amount. The Board seeks comment on whether this fact argues against adoption of the proposed change.

[7] If a marginable debt security is sold short, the margin required is 100 percent of the current market value of the security plus the margin required by the creditor in good faith.

7. Eligibility of Equity Securities for Credit Under Regulations G, T, and U

In order to qualify for credit under Regulation T, an equity security must be a mutual fund, a bond convertible into a qualifying equity security, or registered on a national securities exchange, trade in NASDAQ's National Market System, or appear on the Board's quarterly lists of ''marginable OTC stocks'' or ''foreign margin stocks.'' Stocks qualify for inclusion on the Board's lists if they meet Regulation T's definition of ''OTC margin stock'' or ''foreign margin stock.''

A. Foreign Margin Stocks Under Regulation T

The Board is adopting as a final rule an amendment to Regulation T that includes as a foreign margin stock any foreign stock that has a ''ready market'' for purposes of the SEC's net capital rule. 17 CFR 240.15c3–1(c)(11)(i). SEC staff has stated that they will take no action against broker-dealers that treat any foreign stock listed on the Financial Times-Actuaries World Indices as having a ready market for purposes of computing a broker-dealer's net capital. Thus, these stocks will be added to the Board's foreign list.

Although there is considerable overlap between the stocks on the Financial Times Indices and the Board's list of foreign margin stocks, the Financial Times list contains substantially more foreign stocks than the Board's list, and there are also a significant number of foreign stocks that appear on the Board's list but not the Financial Times list. The Board did not receive comment on whether its current list of, and test for, foreign margin stocks would continue to be necessary if this new test were adopted. Accordingly, the Board seeks comment on whether it should rely on the ready market test exclusively and phase out the Board's own test and list.

B. Domestic Margin Stocks

The Board is also seeking comment on whether it should supplement or replace the current criteria for qualification as an OTC margin stock in section 220.17 of Regulation T by allowing a broker-dealer to extend credit on any stock traded on a national securities exchange, quoted on NASDAQ, or otherwise having a ''ready market'' for purposes of the SEC's net capital rule. In the domestic area, SEC staff has taken the position that a stock has a ''ready market'' if: (1) three or more market makers quote its prices through the so-called ''pink sheets,'' and (2) the broker-dealer can show the existence of bona fide inter-dealer trades within five business days before or after the date of valuation that are of sufficient volume to justify a reasonable belief that the price used would support the liquidation of the entire position at or near that price.

This proposal would make 1700 NASDAQ stocks, as many as 5400 stocks quoted on the NASD's electronic bulletin board, and an unknown number of additional ''pink sheet'' stocks eligible for broker-dealer credit for the first time. Some of these stocks are thinly traded when compared to currently marginable stocks, including those that qualify as OTC margin stocks. The Board seeks comment on whether such stocks should be eligible to serve as collateral for securities credit.

The Board particularly seeks comment on whether an expansion in the number of OTC margin stocks should be made only for purposes of Regulation T, or for purposes of Regulations G and U as well. Although all the Board's margin regulations currently contain a common definition of ''OTC margin stock,'' this common definition does *not* result in common treatment of all lenders. Under Regulation T, a broker-dealer is *prohibited* from lending on any domestic stock that does not qualify as an OTC margin stock; conversely, a bank or other lender is *unregulated* by Regulations U and G when it lends on any stock that does not qualify as an OTC margin stock. Thus, qualification of a stock as an OTC margin stock *increases* its loan value under Regulation T from zero to 50 percent, but subjects it for the first time to coverage by Regulations G and U and thereby *decreases* its loan value to the extent that banks and other lenders had previously been willing to give the stock loan value of greater than 50 percent. Conversely, disqualification of a stock as an OTC margin stock eliminates its loan value under Regulation T and thereby prevents broker-dealers from lending on it, but eliminates its coverage by Regulations G and U and allows banks and other lenders to lend as much as they deem appropriate.

Thus, using the ready market definition for purposes of Regulations G and U would impose burdens on banks and other lenders. Use of the definition would limit the amount of credit that banks could extend on thousands of additional stocks and would also require banks to obtain a ''purpose statement'' (FR U–1) whenever they lend more than $100,000 on those stocks. In addition, it would no longer be possible for the Board to publish a complete ''List of Marginable OTC

Stocks'' (OTC List), as the stocks that met the SEC's ready market test would be ever changing and outside the Board's control. Banks therefore would be responsible for determining on their own whether a given OTC equity security was subject to Regulation U. The burden imposed on Regulation G lenders would be similar.[8] In addition, the number of lenders potentially covered by Regulation G would expand to include as many as 6600 additional companies to the extent that those companies extended credit to their employees secured with company stock.[9] Although the Board currently alerts companies with OTC margin stock to the possibility of registration under Regulation G, elimination of the OTC list would prevent the Board from continuing this practice.

Accordingly, the Board is seeking comment on possible solutions to the disparate treatment of broker-dealers and other lenders, and the resulting increase in burden for one group whenever burden is reduced for the other. The Board seeks comment on whether it should establish separate regimes for determining coverage by Regulation T on the one hand, and Regulations G and U on the other; for example, any domestic stock that has a ready market for purposes of the SEC's net capital rule might receive loan value under Regulation T, while only domestic stocks that are listed on an exchange might be subject to Regulations G and U.

8. Options Under Regulation U

On December 12, 1995, the Board published proposed amendments to Regulation U, including one that concerned the treatment of exchange-traded options. The proposal mirrored the treatment proposed by the Board for broker-dealers under Regulation T. Specifically, the Board proposed to allow the same 50 percent loan value for long positions in exchange-traded options currently permitted for other exchange-traded equity securities. Because the final rule under Regulation T ties the loan value of these securities to the rules of the exchange authorized to trade the option, the Board is proposing, as a matter of parity between Regulations T and U, to amend Regulation U so that banks can lend against exchange-traded options to the extent permitted by the rules of the options exchanges. The Board seeks comment on the practicality of requiring banks to comply with rules of SROs of which they are not members.

9. Technical Amendments

The Board is also prescribing technical amendments to Regulation T that are intended to streamline and rationalize the regulation without altering its substance. The Board is proposing to add a definition of ''margin equity security,'' a term currently used but not defined in the regulation. The Board is seeking comment on whether the definition of ''covered option transaction'' can be shortened to include ''any transaction eligible for the cash account under the rules of the registered national securities exchange authorized to trade the option or warrant or the creditor's examining authority in the case of an unregistered option provided that all such rules have been approved or amended by the SEC.'' This change could not take effect until the provision in the final rule delegating authority over options to the SROs became effective.

Regulatory Flexibility Act

The Board has concluded after reviewing the proposed regulation that, if adopted, it would not impose a significant economic hardship on small institutions. The proposal does not necessitate the development of sophisticated recordkeeping or reporting systems by small institutions; nor will small institutions need to seek out the expertise of specialized accountants, lawyers, or managers in order to comply with the regulation. The proposal is designed to reduce the complexity and burden of Regulation T. The Board therefore certifies pursuant to section 605b of the Regulatory Flexibility Act (5 U.S.C. 605b) that the proposal, if adopted, will not have a significantly adverse economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*).

Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Projects 7100–0001 (or 7100–0004), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information implications of the proposal to amend this regulation are found in 12 CFR part 220. This information is required to evidence compliance with the requirements of the Securities Exchange Act of 1934 (15 U.S.C. 78g). The respondents are for-profit financial institutions (7100–0001) and public corporations (7100–0004).

Implications for Reporting

The proposal to change the definition of ''OTC margin stock by allowing a broker-dealer to extend credit on any stock traded on a national securities exchange, quoted on NASDAQ, or otherwise having a 'ready market' * * *'' could lead to an increase in the number of respondents for the OTC Margin Stock Report (FR 2048; OMB No. 7100–0004) because of the increase in the number of firms whose stock would be marginable. The burden per response of 0.25 hours would not change. However, if it is decided that the stock of any firm listed on the NASD SmallCap market is automatically marginable, as currently is the case for the stocks of firms listed on the NASD National Market System, the FR 2048 could be eliminated. Currently, the FR 2048 is filed by approximately 75 respondents each quarter. The current annual burden of the FR 2048 is estimated to be 75 hours. Based on an hourly cost of $20, the annual cost to the public is estimated to be $1,500.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, an information collection unless it displays a currently valid OMB control number.

Comments are invited on: (a) whether the proposed amendments to this collection of information are necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

[8] Regulation G does not contain a paperwork exemption for loans of $100,000 or less, so all loans secured by these new OTC margin stocks would require a ''purpose statement'' (Form FR G–3).

[9] Companies that extend credit to employers in connection with an employee benefit plan adopted by the company and approved by its stockholders are not subject to the 50 percent requirement normally imposed on loans secured by margin stock. 12 CFR 207.5. However, these companies must register with the Federal Reserve and provide annual reports of their securities credit activities.

List of Subjects

12 CFR Part 207

Banks, banking, Credit, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

12 CFR Parts 220 and 221

Banks, banking, Bonds, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investment companies, Investments, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Board proposes to amend 12 CFR Part 220 as follows:

PART 220—CREDIT BY BROKERS AND DEALERS (REGULATION T)

1. The authority citation for Part 220 continues to read as follows:

Authority: 15 U.S.C. 78c, 78g, 78h, 78q, and 78w.

2. Section 220.2 is amended as follows:

a. By adding a new definition of *Margin equity security* in alphabetical order;

b. By revising paragraph (3) in the definition of *Margin security*;

c. By adding a new definition of *Non-equity security* in alphabetical order;

d. By removing the definition of *OTC margin bond*.

The additions and revisions read as follows:

§ 220.2 Definitions.

* * * * *

Margin equity security means a margin security that is an equity security (as defined in section 3(a)(11) of the Act.).

* * * * *

Margin security * * *

(3) Any non-equity security;

* * * * *

Non-equity security means a security that is not an equity security (as defined in section 3(a)(11) of the Act).

* * * * *

3. Section 220.3(b) is revised to read as follows:

§ 220.3 General provisions.

* * * * *

(b) *Separation of accounts*—(1) *In general.* The requirements of one account may not be met by considering items in another account. If withdrawals of cash or securities are permitted under the regulation, written entries shall be made when cash or securities are used for purposes of meeting requirements in another account.

(2) *Exceptions.* Notwithstanding paragraph (b) (1) of this section—

(i) For purposes of calculating the required margin for a security in the non-equity account or margin account, assets described in § 220.9(a) (1) or (2) may serve in lieu of margin;

(ii) Transfers may be effected between the margin account and the special memorandum account pursuant to §§ 220.4 and 220.5.

* * * * *

4. Section 220.4(b)(1) is revised to read as follows:

§ 220.4 Margin account.

* * * * *

(b) *Required margin*—(1) *Applicability.* The required margin for long or short positions in securities is set forth in § 220.18 (the Supplement) and is subject to the following exceptions and special provisions.

* * * * *

5. The text of § 220.13 is redesignated as paragraph (j) of § 220.3, the section heading of § 220.13 is redesignated as the heading of newly designated paragraph (j) of § 220.3, and § 220.13 is removed.

6. New section 220.13 is added to read as follows:

§ 220.13 Non-equity account.

(a) *Permissible transactions.* In a non-equity account, a creditor may effect and finance any transaction involving any non-equity security. No transaction or withdrawal shall be allowed if it would cause the account to liquidate to a deficit.

(b) *Required margin.* The required margin for transactions effected in the non-equity account is set forth in § 220.18 (the Supplement).

7. Section 220.16 is amended by revising the second sentence of paragraph (a) and the last sentence of paragraph (b) to read as follows:

§ 220.16 Borrowing and lending securities.

Option 1 for Paragraph (a)

(a) * * * Each borrowing shall be secured by a deposit of one or more of the following: cash, cash equivalents, foreign sovereign nonconvertible debt securities that are margin securities, collateral acceptable for borrowings of securities pursuant to SEC Rule 15c3–3 (17 CFR 240.15c3–3), irrevocable letters of credit issued by a bank insured by the Federal Deposit Insurance Corporation or a foreign bank that has filed an agreement with the Board on Form FR T–1, T–2, or any margin security, valued at its loan value.* * *

Option 2 for Paragraph (a)

(a) * * * Each borrowing shall be secured by a *bona fide* deposit of collateral equal to at least 100 percent of the market value of the securities borrowed.* * *

(b) * * * Each borrowing shall be secured by a *bona fide* deposit of collateral equal to at least 100 percent of the market value of the securities borrowed.

8. Section 220.18 is amended by revising the introductory text and paragraphs (b) through (d) to read as follows:

§ 220.18 Supplement: Margin requirements.

The required margin for positions held in a margin account shall be as follows:

* * * * *

(b) Exempted security, non-equity security, money market mutual fund, or exempted securities mutual fund: the margin required by the creditor in good faith or the percentage set by the regulatory authority where the trade occurs, whichever is greater.

(c) Short sale of a nonexempted security, except for a non-equity security: 150 percent of the current market value of the security, or 100 percent of the current market value if a security exchangeable or convertible within 90 calendar days without restriction other than the payment of money into the security sold short is held in the account.

(d) Short sale of an exempted security or non-equity security: 100 percent of the current market value of the security plus the margin required by the creditor in good faith.

* * * * *

By order of the Board of Governors of the Federal Reserve System, April 24, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–10608 Filed 5–3–96; 8:45 am]

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May 6, 1996

Part V

Department of Commerce

International Trade Administration

Standard Chrysanthemums From the Netherlands; Preliminary Results of Countervailing Duty Administrative Reviews; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

[C–421–601]

Standard Chrysanthemums From the Netherlands; Preliminary Results of Countervailing Duty Administrative Reviews

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

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting two administrative reviews of the countervailing duty order on standard chrysanthemums from the Netherlands. We preliminarily determine the net subsidy to be 0.43 percent *ad valorem* for the period January 1, 1992, through December 31, 1992, and 0.80 percent *ad valorem* for the period January 1, 1993, through December 31, 1993. If the final results of these reviews remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to assess countervailing duties as indicated above. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 6, 1996.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Richard Herring, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 12, 1987, the Department published in the Federal Register (52 FR 7646) the countervailing duty order on standard chrysanthemums from the Netherlands. On March 12, 1993, and March 4, 1994, the Department published notices of ''Opportunity to Request Administrative Review'' of this countervailing duty order (58 FR 13583) and (59 FR 10368), respectively. We received timely requests for reviews for the 1992 and the 1993 review periods from petitioner, Floral Trade Council.

We initiated the review covering the period January 1, 1992 through December 31, 1992, on May 6, 1993 (58 FR 26960). We initiated the review covering the period January 1, 1993, through December 31, 1993, on April 15, 1994 (59 FR 18099). We conducted a verification of the questionnaire responses in the 1992 administrative review from February 7 through 14, 1994. These reviews are being conducted on an aggregate basis.

Applicable Statute and Regulations

The Department is conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994. However, references to the Department's *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366 (May 31, 1989) (*Proposed Regulations*), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *Proposed Regulations* were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. *See* 60 FR 80 (Jan. 3, 1995).

Scope of Review

Imports covered by these reviews are shipments of Dutch standard chrysanthemums. Such merchandise is classifiable under item number 0603.10.70 of the *Harmonized Tariff Schedule* (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Verification

As provided in section 776(b) of the Act, we verified information provided by the Government of the Netherlands. We followed standard verification procedures, including meeting with government officials and examining relevant original source documents. Our verification results are outlined in the public versions of the verification report, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Calculation Methodology for Assessment and Cash Deposit Purposes

We calculated the net subsidy on a country-wide basis by first calculating the subsidy rate for each program. We then summed the subsidy rates from all programs benefitting exports of the subject merchandise to the United States.

Analysis of Programs

I. Programs Conferring Subsidies

A. Programs Previously Determined to Confer Subsidies

1. Aids for the Creation of Cooperative Organizations

Under European Community (EC) Regulation 355/77, the EC has provided grants to Dutch auction houses, which are flower grower cooperatives. These funds were provided by the EC through the Agricultural Guidance and Guarantee Fund, with matching grant contributions from EC member states. The purpose of the program was to improve the processing, marketing and distribution of agricultural products in member states. This program was terminated on January 1, 1986, and no grants were disbursed after 1987.

In the 1986 and 1987 reviews, the Department determined that this grant program was countervailable because it was limited to a specific enterprise or industry, or group of enterprises or industries in the Netherlands. (*See Standard Chrysanthemums From The Netherlands; Preliminary Results of Countervailing Duty Administrative Review* (54 FR 43977, 43978; October 30, 1989) and *Standard Chrysanthemums From the Netherlands; Final Results of Countervailing Duty Administrative Review* (55 FR 462; January 5, 1990) (*1987 Preliminary and Final Results*)). Although this program was officially terminated in 1986, under our grant methodology, benefits are still accruing from this program.

To calculate the benefit, we used a declining balance grant methodology, as determined in the *Final Affirmative Countervailing Duty Determination; Certain Fresh Cut Flowers From the Netherlands* (52 FR 3301; February 3, 1987) (*Netherland Flowers*). We allocated the benefits from each grant over 10 years, the average useful life of renewable physical assets in the agricultural sector as determined under the U.S. Internal Revenue Service's Asset Depreciation Range System. This methodology is in accordance with the *Proposed Regulations* (51 FR 23366, 23385; May 31, 1989). We used the average interest rate for long-term commercial loans published by the Netherlands Bank (the Central Bank) as the discount rate for each year in which grants were provided. We divided the sum of these benefits by the f.o.b. value of total auction sales in the relevant review period. On this basis, we preliminarily determine the net subsidy to be 0.07 percent *ad valorem* for 1992 and 0.04 percent *ad valorem* for 1993.

2. Glasshouse Enterprises Program

Under the Glasshouse Enterprises Program, the Ministry of Agriculture, Nature Management and Fisheries (MAF) provided grants to greenhouse growers to stimulate private investment in energy saving methods in the horticulture industry. This program was terminated in June 1985. However, grants approved prior to the termination were disbursed through 1987.

We previously determined that this program was a countervailable domestic subsidy because it was available only to greenhouse growers. (*See 1987 Preliminary and Final Result*). Although this program officially terminated in 1985, under our grant methodology, benefits are still accruing from this program.

To calculate the benefit from this program, we used the grant methodology described in section 1. above. We divided the total benefits from these grants by the value of total greenhouse sales in the relevant review period. On this basis, we preliminarily determine the net subsidy to be 0.17 percent *ad valorem* for the period January 1, 1992, through December 31, 1992, and 0.09 percent *ad valorem* for the period January 1, 1993 through, December 31, 1993.

3. Aids for the Reduction of Glass Surface

Under the Aids for the Reduction of Glass Surface program, the MAF provided grants to greenhouse growers for the purpose of increasing the energy efficiency of greenhouses by replacing existing glass with modern energy-saving glass. The program was terminated in November 1984. However, grants approved prior to the termination of the program were disbursed through 1987.

We previously determined that this program was countervailable because it was limited to a specific enterprise or industry, or group of enterprises or industries. (*See 1987 Preliminary and Final Results*). Although this program was officially terminated in 1984, under our grant methodology, benefits are still accruing under this program.

To calculate the benefit from this program, we used the grant methodology described in section 1. above. We divided the total benefits from these grants by the value of total greenhouse sales in the relevant review period. On this basis, we preliminarily determine the net subsidy to be less than 0.005 percent *ad valorem* for the period January 1, 1992, through December 31, 1992, and less than 0.005 percent *ad valorem* for the period January 1, 1993, through December 31, 1993.

4. Steam Drainage Systems

In January 1981, the Government of the Netherlands (GON) banned the use of methylbromide as a means of soil disinfection due to the potential health hazards caused by the chemical. In December of that year, the MAF established a program making available cash grants to encourage the use of steam drainage as an alternative method of soil disinfection for greenhouses. The program was terminated in September 1984. However, some grants were disbursed through 1987.

In the 1990 administrative review, we determined that this program was countervailable because it was limited to a specific enterprise or industry, or group of enterprises or industries. (*See Standard Chrysanthemums From the Netherlands; Preliminary Results of Countervailing Duty Administrative Review* (57 FR 9539; March 19, 1992) and *Standard Chrysanthemums From the Netherlands; Final Results of Countervailing Duty Administrative Review* (57 FR 24249; June 8, 1992) (*1990 Preliminary and Final Results*)). Although this program was officially terminated in 1984, under our grant methodology, benefits are still accruing under this program.

To calculate the benefit from this program, we used the grant methodology described in section 1, above. We divided the benefits from these grants by the value of total greenhouse sales in the relevant review period. On this basis, we preliminarily determine the net subsidy to be less than 0.005 percent *ad valorem* for the period January 1, 1992, through December 31, 1992, and less than 0.005 percent *ad valorem* for the period January 1, 1993, through December 31, 1993.

B. New Program Preliminarily Found to Confer Subsidies

Stimulation for the Innovation of Electric Energy (SES)

The SES program was implemented in 1988 with the goal of stimulating energy conservation. Under the administration of the Ministry of Economic Affairs (MEA), the program is designed to encourage the installation of cogeneration equipment by providing payments of up to 25 percent of the equipment cost, with a cap of 20 million guilders per project. Cogeneration equipment reduces energy consumption by up to 30 percent.

At verification, we found that this program is available to virtually all industries. Although the program is neither designed nor administered with any particular industry in mind, we were told by MEA officials that greenhouse growers were ideal candidates for the program due to their enormous demand for energy. *See Verification Report of the Questionnaire Response in the 1992 Administrative Review* (April 3, 1995) (public document).

We examined disbursements made under the program on an industry-specific basis to determine whether horticulture was the dominant user or received a disproportionate share of benefits under this program. We based our analysis on payments to all horticulture recipients because information is not available on a plant-by-plant basis. Based on our analysis, we found that horticulture accounted for 69 percent of all grant approvals and received 36 percent of all disbursements. Horticulture was, therefore, the largest recipient of grants under this program compared to the share of benefits to other recipients whose disbursements ranged from less than 0.01 percent to 13.9 percent. In prior cases where the Department has found disproportionality, we analyzed whether a program provided a disproportionate share of benefits by comparing their collective or individual share of benefits provided to all other users of the program in question. (*See, e.g., Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel From Italy* (59 FR 18357; April 18, 1994) (*Electrical Steel*)). In *Electrical Steel*, steel producers received 34 percent of the benefits under the examined program. In that case, we found that steel producers received a disproportionate share of the program being considered. Similarly, in this case we compared the share of benefits received by horticulture to the collective share of benefits to all others. On this basis, we determine that the SES program provided a disproportionate share of benefits to horticulture. Thus, we preliminarily determine that this program provides a countervailable benefit to producers of the subject merchandise.

Our policy with respect to grants is (1) to expense recurring grants in the year of receipt and (2) to allocate non-recurring grants over the average useful life of assets in the industry, unless the sum of grants provided under a particular program is less than 0.50 percent of a firm's total or export sales (depending on whether the program is a domestic or export subsidy) in the year in which the grants were received. (*See* section 355.49(a) of the *Proposed*

Regulations and the *General Issues Appendix*, at 37226, which is attached to *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria* (58 FR 37217; July 9, 1993) (*General Issues Appendix*)).

For the 1992 administrative review, the amount of grants received under this program was not less than 0.50 percent of greenhouse sales. Therefore, we must determine whether the grants provided under the SES program are recurring or nonrecurring to determine whether the grants should be expended in the year of receipt or allocated over time. For the 1993 administrative review, the total amount of grants provided to greenhouses under the SES program was less than 0.50 percent of total greenhouse sales. Therefore, the total value of all grants provided under this program in 1993 have been allocated to that year.

The Department considers that a grant is nonrecurring if the benefits are exceptional, the recipient cannot expect to receive benefits on an ongoing basis from year to year, and/or the provision of funds by the government must be approved every year. The Department also considers that grants used for the purchase of fixed assets would generally be considered nonrecurring. (*See General Issues Appendix, at 37226*). We therefore determine that benefits from grants provided under the SES program are nonrecurring. On this basis, we allocated the benefit from the grants provided under this program during 1992 over the useful life of assets.

Grants were also provided to greenhouses during the years 1988 through 1991. In those years, the grants provided were less than 0.50 percent of total greenhouse sales. Therefore, we would have allocated all grants provided under this program solely to the year of receipt.

To calculate the benefit from this program, we allocated the benefits from grants received in 1992 using the declining balance grant methodology described in section I.A.1. above. For 1993, the benefit is the total value of all grants provided in that year, plus the benefits from the 1992 grants that were allocable to 1993. We then divided the total benefits from these grants by the value of greenhouse sales for the respective review period. On this basis, we preliminarily determine the net subsidy to be 0.18 percent *ad valorem* for the period January 1, 1992, through December 31, 1992, and 0.66 percent *ad valorem* for the period January 1, 1993, through December 1, 1993.

II. Programs Preliminarily Found Not to be Countervailable

1. Arrangement for Stimulation of Innovation Projects

Petitioner alleged that floricultural products benefitted from the Arrangement for Stimulation of Innovation Projects. This program was implemented in 1991 as the continuation of two innovation programs (the Subsidy Scheme for Large Innovation Projects of 1989 and the Grant Scheme for Small Innovation Projects of 1984.) Under the program, the MAF provided funds to promote innovation within the agriculture sector, including entities engaged in flower production. To qualify for assistance, projects must have an innovative element and offer new technological and economic perspectives that have not yet been in practice. In addition, the projects must be such that the results can be passed on to other firms in the Netherlands. Project applications are assessed yearly by technical experts in consultation with agribusiness. Approval or rejection of an application is not based on the type of agricultural production engaged by the applicant, but rather on whether the project meets the criteria outlined above.

The GON divides agriculture into four major subsectors: horticulture, arable farming (crops grown on arable land), livestock farming and cattle farming. We found that grants were provided to all of the subsectors within agriculture. We examined at verification a table listing disbursement of funds, by industry, showing cumulative payments made under the program through December 1993. We verified that flowers accounted for only 0.59 percent of total disbursements under this program.

Because all agricultural subsectors are eligible for and used the Stimulation of Innovation Projects program, and because no disproportionate benefits were provided under this program, we preliminarily determine this program is not countervailable because it is not limited to a specific enterprise or industry, or group thereof.

2. Arrangement for Structural Improvement and the Complementary Scheme for Investment in Agricultural Holdings

Petitioner alleged that floricultural products received benefits from this program. The Arrangement for Structural Improvement (SVL) was implemented in 1985 as a result of the EC Improvement of Efficiency of Agriculture Structures Regulation, which mandated that each member state develop a program to improve efficiency within the agricultural sector. Through the provision of grants to cover the interest on loans for farm improvement projects, the arrangements aim to promote a more rapid adjustment of businesses to environmental and animal welfare requirements. The MAF provides assistance to specified investments which must benefit certain environmental and animal welfare policy objectives. Each year applications from the entire agricultural sector are approved by the MAF. These projects must generate a return but cannot lead to an expansion of production capacity. Any farmer with a farm production income between 15,155 and 43,300 guilders is eligible to apply for SVL assistance. There are no restrictions on the types of agricultural or horticultural products raised or produced by the eligible farmer.

The EC regulation distinguishes between two types of investments, real estate and non-real estate, and allows funding levels of up to 35 percent and 25 percent, respectively. The level of funding allowed by the Dutch regulations, however, is lower than the EC regulation levels. According to Dutch regulations, funding levels range from 7.5 percent to 25 percent, depending upon the type of project.

The SVL program receives co-financing from the EC in the amount of 25 percent of the payments made by the Dutch government. For example, although the EC regulation allows funding levels up to 35 percent for real estate related investments, the Dutch regulation (SVL) allows only 7.5 percent funding. Of the 7.5 percent that is paid by the Dutch government, the EC reimburses 25 percent of the payment.

The Complementary Scheme for Investment in Agricultural Holdings (CRL) was implemented in 1989 by EC Regulation 2328/91. Under this scheme, the MAF provides assistance to farmers which do not meet the farm income requirement for SVL grants.

As with the SVL scheme, the CRL arrangement aims to promote a more rapid adjustment of businesses to environmental and animal welfare through the provision of grants for farm improvement projects. Grants are given for specified investments which must benefit certain environmental and animal welfare policy objectives. These projects, too, must generate some return but must not lead to an expansion of production capacity. The main eligibility requirement for assistance under the CRL is that the agricultural holding must have a production capacity of a one man-work unit. In addition, the investment cannot have been initiated prior to applying for CRL

funds. All sectors of agriculture are eligible to apply for assistance under the CRL scheme.

The CRL provides funds for projects in three areas of investments: environmental protection and improvement, quality improvement, and improvement of working conditions. According to a 1992 MAF Annual Report, 74 percent of the approved investments under this program during that year were in the area of environmental protection and improvement. The GON typically provides funds for 15 to 25 percent of the approved projects. The application process for CRL grants is the same as for assistance in the SVL.

During verification, the Department confirmed that grants under the SVL and CRL schemes were provided to the entire agricultural community and that the evaluation criteria for approval were not product-based. We found that, in 1992, horticulture accounted for 11 percent of total applications for SVL assistance and 3.2 percent of total investments under the SVL.

In the investigation, the Department reviewed a similar program which provided funding of interest on loans for the modernization of agricultural ventures under the Decree for Structural Improvement of Agricultural Enterprises. That program was found not countervailable, since there was no indication that the program was targeted toward flower growers, or was otherwise limited to a specific enterprise or industry. (*See Netherland Flowers*.)

Because all agricultural products are eligible for and used SVL and CRL grants, and because no disproportionate of benefits were provided under the SVL and CRL program, we preliminarily determine this program is not limited to a specific enterprise or industry or group thereof.

3. Natural Gas Provided at Preferential Rates

Natural gas in the Netherlands is sold directly to major customers by the N.V. Nederlandse Gasunie (Gasunie), the utility company. The Agricultural Industrial Board, or ''Landbouwschap,'' a quasi-governmental body created under the Industrial Organizations Act, negotiates with Gasunie prices and general terms of gas delivery for Dutch greenhouse growers. The Landbouwschap is the central consultative and cooperative organization for agriculture in the Netherlands. Its purpose is to represent the economic and political interests of the agricultural sector. All agriculturists are required to be members of the organization and pay dues. Gasunie is 40 percent owned by DSM Aardgas (a company wholly-owned by the GON), 10 percent by the GON, 25 percent by Shell Nederland, and 25 percent by Esso Nederland N.V. While the GON does not own a controlling interest in Gasunie, it plays a significant role in setting the price of natural gas. The Minister of Economic Affairs reserves the right to approve selling prices and terms of delivery for supplies to public distributors in the Netherlands, large export contracts, and contracts between Gasunie and the Landbouwschap.

Natural gas prices are based on levels of consumption, which are broken down into four categories or ''zones'', zones a through d. Zone a consumers use between 0 and 170,000 cubic meters (m^3) of gas per year; zone d consumers use between 10 million to 50 million m^3 of gas per year. Zone a users pay the highest price per m^3; zone d the lowest.

In the October 1984 contract negotiated with Gasunie by the Landbouwschap on behalf of greenhouse growers, a maximum ceiling price was established. In *Netherlands Flowers*, we determined that this contract with the price ceiling provision was countervailable. Accordingly, in *Netherlands Flowers*, we determined that the benefit to greenhouse growers was the difference between the price of gas actually paid by greenhouse growers in the period of the investigation and the zone d price they would have had to pay under the contract absent the price ceiling provision.

In the 1987 administrative review (54 FR 43977,43978; October 30, 1989), a renegotiated contract was in effect. Because the new contract did not contain a provision for a ceiling price, we determined greenhouse growers did not receive natural gas at preferential rates and, therefore, the program did not confer a countervailable benefit. This contract expired on October 1, 1989.

In the last administrative review, we found that greenhouse growers, through the Landbouwschap, had negotiated a new contract with Gasunie for the period October 1, 1989 through October 1, 1994. The terms of the new contract were basically the same as the 1987 contract. Therefore, we determined that such a contract did not confer a countervailable benefit. (*See 1990 Preliminary and Final Results*).

With respect to the pricing arrangement under this program, we confirmed during the verification of the 1992 administrative review that the terms of the contract in effect during this review period, which were still in effect during the subsequent 1993 review period, had not changed from the previous contract found not countervailable in the 1990 administrative review. Therefore, we continue to determine that the contract rate for greenhouse growers does not provide a countervailable benefit to producers and exporters of the subject merchandise.

However, in the 1992 administrative review, petitioners alleged that an additional aspect of the contract may confer a countervailable benefit upon the production of the subject merchandise. Petitioner alleged that the contract in effect during the 1992 review period contained a new compensation arrangement for ''small'' consumption users of natural gas. During verification of the 1992 administrative review, we found that this compensation arrangement was part of the contract in effect during October 1989 through October 1994 (the 1989–1994 contract).

Negotiated by the Landbouwschap, that contract was made on behalf of the horticulture sector. Gas prices in the 1989–1994 contract were based on two annual gas consumption levels: Level 1, 0–30,000 cubic meters (m^3); and Level 2, 30,000 m3 and over. Since gas prices were lower for Level 2 consumption, there were concerns that users consuming less than 30,000 m^3 of gas might waste gas in order to qualify for the lower rate. Therefore, Landbouwschap and Gasunie established a compensation arrangement which provided rebates to small gas users to offset the difference in the consumption prices. The purpose of this compensation arrangement was twofold: to ensure energy conservation as well as to protect the environment.

According to the provisions of the contract, the arrangement was funded through monies paid by those Landbouwschap members which were large gas users. The fund, administered by Landbouwschap, was derived from a surcharge built into the price of gas paid by the large gas users under the 1989–1994 contract. The criteria for eligibility, as outlined in the contract, were that the recipient had to be a registered agriculturist or horticulturist and that the gas had to be used for the growing process of horticulture. We noted at verification that virtually all horticulturists (95–98 percent) fell under Level 2 with an average consumption of 450,000 m^3 a year; these users were covered by the 1989–1994 contract between the Landbouwschap and Gasunie. The remaining horticulturists were the small gas users who could be eligible for a rebate.

With respect to the separate rebate program for small growers, we determine that the program does not provide a countervailable benefit. This

rebate program was established under the contract between Landbouwschap and Gasunie, and the funds used to provide the rebates are collected from the large growers and then are distributed to the small growers of the cooperative. The utility company received the full rates due it under the contract from both the large and small grower-members of the Landbouwschap. Under this arrangement, the role of Gasunie is to collect the surcharge from the larger members of the Landbouwschap. These funds are then returned to the Landbouwschap, which administers the program and provides the rebates to the small growers. In addition, there is no evidence to indicate that the Landbouwschap was required by Government of the Netherlands to enter into this specific contract arrangement with Gasunie. As such, this rebate program is not countervailable.

4. Income Tax Deduction

The Income Tax Deduction was established in January 1990 under Article 11 of The Netherlands Tax Code and was geared towards small businesses. The program provides for a tax allowance on investments in tangible assets. Any entrepreneur is eligible for this deduction as long as the business reports the investments on the income tax form, the investment amount does not exceed 471,000 guilders, and the investment is substantiated by attaching the capital improvement invoices to the tax form. The allowance ranges from 2 percent to 18 percent, depending on the amount of the investment, and is deducted from the profits made during the year in which the investment is made. The legislation provides that all industries are eligible to claim the income tax deduction if the aggregate annual investments are at least 3,100 guilders, but not more than 471,000 guilders. As the investment amount increases, the investment deduction decreases. For example: for an investment in the 3,100–53,000 guilder range, the allowable deduction is 18 percent of the investment; for investments in the 419,000–471,000 guilder range, it is 2 percent. Companies exceeding the investment cap are not eligible for a deduction under this program.

At verification, we found that as long as any entrepreneur meets the investment criteria the receipt of the deduction is automatic and that there is no formal application process to apply for the deduction. We also found that no specific government approval is required prior to a company filling its tax form. Therefore, because any business in the Netherlands who makes an investment no greater than 471,000 guilders automatically receives the income tax deduction under this program by merely claiming it in its tax return, we preliminarily determine this program to be not countervailable because it is not limited to a specific enterprise or industry, or group thereof.

5. Value Added Tax (VAT) Reduction of 6 Percent for Natural Gas Users and Partial Restitution of VAT for Mineral Oils, Fuels, Bulk or Bottled Gas

Petitioner alleged that the horticultural industry benefits from a reduced VAT on natural gas and a partial restitution of the VAT on purchases of mineral oils, fuel and bulk or bottled gas used for heating greenhouses. The VAT system was first introduced in 1960 by the EC. The VAT is a country-wide internal consumption tax paid by consumers. As a commodity goes through various processing or production stages, each downstream consumer pays a tax on the value added portion of the product. The seller subtracts the tax already paid and forwards the VAT owed on the ''enhanced or improved portion'' of the commodity to the Dutch Internal Revenue Service. The general VAT rate for the Netherlands was 17.5 percent during the review period.

When the EC first introduced the VAT, it decided that the agricultural sector could be exempted from the normal VAT system because the required record keeping was too burdensome. Under Article 25 of the EC Sixth Council Directive of May 17, 1977 (the 1977 Directive), member countries could exclude all or partial sectors of agriculture and establish different rates for this sector.

Agricultural producers in the Netherlands fall under a flat-rate scheme established to offset the VAT ''expense'' included in the price of the goods and services they provide. Under this scheme, farmers are not entitled to deduct the VAT they have already paid when purchasing their own goods and services, but instead pass it along in their selling price(s). Commodities sold by farmers to individual consumers incorporate the prior stage VAT, resulting in a higher price to the consumer.

The 1977 Directive and the Dutch National Tax Law also stipulate a reduced VAT rate of 6 percent for virtually all goods and services purchased or used by flat-rate farmers. Therefore, during this review, farmers (which also includes all greenhouse growers and horticulturists) paid only a 6 percent VAT rate on natural gas purchased for heating their greenhouses.

In addition to the flat-rate scheme outlined above, farmers are eligible for a reduced VAT rate of 6 percent, as per Article 34b of the Dutch National Tax Law, on the purchase of fuels, mineral oils, and bulk or bottled gas used for heating their greenhouses. In purchasing these products, farmers paid the standard 17.5 percent VAT rate and then applied for a VAT rebate with the MAF. The rebate is 11.5 percent of the value of the gas or oil (not including the VAT). The rebate represents the difference between the 17.5 percent VAT already paid and the 6 percent VAT the farmers are entitled to pay under the Dutch National Tax Law.

We verified that under Article 17 of the Dutch National Tax Law the VAT rate established for farmers was 6 percent. We also found that the Dutch Value Added Tax Act of 1968 provides a 6 percent reduced tax rate for a variety of goods and services used in agriculture; such as, foodstuffs, cereals, seeds, cattle, sheep, goats, pigs, horses, breeding eggs, veterinary medicines, water, gas and mineral oil, beetroot, agricultural seeds, fertilizer, feed, round wood, flax, wool, agricultural tools, bulbs, plants, and services to agriculture, such as, contracting, repairs, breeding, inspections, accounting, drying, cooling, cleaning and packaging of agricultural products.

To receive a refund of the VAT, any taxpayer entitled to the reduced tax rate was required only to present proof of the amount of VAT tax already paid when purchasing the goods and services. No other approval process was necessary. With respect to the farmer, we found that to obtain a VAT refund, he merely provided proof that his purchases of natural gas, mineral oils, and bulk and bottled gas were used for heating his greenhouse and then received the reduced rate automatically. Therefore, because the 6 percent VAT rate charged to farmers is the same as the 6 percent VAT rate paid by all farmers on virtually all their purchases of goods and services under the Dutch Tax Law, and because no disproportionate benefits were provided under this program, we preliminarily find that this program is not limited to a specific enterprise or industry or group thereof.

6. Guarantee Fund for Agriculture

The Stichting Borgstellingsfonds voor de Landbouw (Foundation Security Fund for Agriculture, or ''Fund'') is used to guarantee the servicing and repayment of loans made by banks to farmers. The Fund acts as an

institutional guarantor, not as a lender itself, providing guarantees only when the security offered by the farmer is inadequate for the total loan amount. A loan application may be made to the Fund only after all of the farmer's own securities or collateral have been provided for the loan. If an application is approved under the Fund, the guarantee applies only to the portion of the loan not originally approved by the bank. This program was originally found countervailable in the *Netherlands Flowers.*

In the 1990 administrative review, we found that the average long-term annual interest rates charged on loans under this Fund were consistent with the average interest rates charged on long-term bank loans, as reported by De Nederlandsche Bank. (*See 1990 Preliminary and Final Results*).

Based on verification of the 1992 review and on our analysis of information provided in the 1993 review, we again determine that the average long-term annual interest rates charged on loans under this Fund were consistent with the average interest rates charged on long-term bank loans. On this basis, we determine that this program does not provide a countervailable benefit. Because this program has not been terminated, we will continue to review it in subsequent administrative reviews.

III. Programs Preliminarily Found Not to be Used

We determine that the producers or exporters of the subject merchandise did not apply for or receive countervailable benefits under these programs during these review periods:

A. Investment Incentive (WIR)—Regional Program.

B. Loans at preferential interest rates.

Preliminary Results of Reviews

For the period January 1, 1992, through December 31, 1992, we preliminarily determine the total net subsidy to be 0.43 percent *ad valorem*. For the period January 1, 1993 through December 31, 1993, we preliminarily determine the net subsidy to be 0.80 percent *ad valorem*.

If the final results of these reviews remain the same as these preliminary results, the Department intends to instruct the Customs Service to assess countervailing duties of 0.43 percent of the f.o.b. invoice price on shipments of the subject merchandise exported on or after January 1, 1992, and on or before December 31, 1992, and 0.80 for all shipments of the subject merchandise exported on or after January 1, 1993, and on or before December 31, 1993.

The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties, as provided for by section 751(a)(1) of the Act, of 0.80 percent of the f.o.b. invoice price on all shipments of the subject merchandise from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted 7 days after the time limit for filing the case brief. Parties who submit written arguments in these proceedings are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Written arguments that are intended to comment on the preliminary results for both the 1992 and 1993 reviews must be submitted to the file for each proceeding. Any hearing, if requested, will be held 7 days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due. The Department will publish the final results of these administrative reviews including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: April 29, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–11242 Filed 5–3–96; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–421–601]

Standard Chrysanthemums From the Netherlands; Preliminary Results of Countervailing Duty Administrative Review

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

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on standard chrysanthemums from the Netherlands. We preliminarily determine the net subsidy to be *de minimis* for all exports of the subject merchandise to the United States for the period January 1, 1994, through December 31, 1994. If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from the Netherlands exported on or after January 1, 1994, and on or before December 31, 1994. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 6, 1996.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Richard Herring, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 12, 1987, the Department published in the Federal Register (52 FR 7646) the countervailing duty order on standard chrysanthemums from the Netherlands. On March 7, 1995, the Department published a notice of ''Opportunity to Request Administrative Review'' (60 FR 12540) of this countervailing duty order. We received a timely request for review from petitioner, Floral Trade Council, and we initiated the review, covering the period January 1, 1994, through December 31, 1994, on April 14, 1995 (60 FR 19018). On November 2, 1995, we fully extended the period for completion of the preliminary and final results,

pursuant to section 751(a)(3) of the Tariff Act of 1930, as amended (*see Extension of the Time Limit for Certain Countervailing Duty Administrative Reviews* (60 FR 55699). As explained in the memoranda from the Assistant Secretary for Import Administration dated November 22, 1995, and January11, 1996, all deadlines were further extended to take into account the partial shutdowns of the Federal Government from November 15 through November 21, 1995, and December 15, 1995, through January 6, 1996. Therefore, the deadline for these preliminary results is no later than April 30, 1996, and the deadline for the final results of this review is no later than 180 days from the date on which these preliminary results are published. This review is being conducted on an aggregate basis. *See Preliminary Results of Review* section of this notice.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA), effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act. References to the *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments* (54 FR 23366; May 31, 1989) (*Proposed Regulations*) are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *Proposed Regulations* were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the URAA. *See* 60 FR 80 (January 3, 1995).

Scope of Review

Imports covered by this review are shipments of Dutch standard chrysanthemums. Such merchandise is classifiable under item number 0603.10.70 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Subsidy Calculations for Assessment and Cash Deposit Purposes

Because this review is being conducted on an aggregate basis, we calculated the net subsidy on a country-wide basis by first calculating the subsidy rate for each program. We then summed the subsidy rates from all programs benefitting exports of the subject merchandise to the United States. The rate will be applied to all exports of the subject merchandise as discussed in the *Preliminary Results of Review* section of this notice.

Analysis of Programs

I. Programs Conferring Subsidies

Programs Previously Determined To Confer Subsidies

1. Aids for the Creation of Cooperative Organizations

Under European Community (EC) Regulation 355/77, the EC has provided grants to Dutch auction houses, which are flower grower cooperatives. These funds were provided by the EC through the Agricultural Guidance and Guarantee Fund, with matching grant contributions from EC member states. The purpose of the program was to improve the processing, marketing and distribution of agricultural products in member states. This program was terminated on January 1, 1986, and no grants were disbursed after 1987.

In the 1986 and 1987 reviews, the Department determined that this grant program was countervailable because it was limited to a specific enterprise or industry, or group of enterprises or industries, in the Netherlands. (*See Standard Chrysanthemums From the Netherlands; Preliminary Results of Countervailing Duty Administrative Review* (54 FR 43977, 43978; October 30, 1989) and *Standard Chrysanthemums From the Netherlands; Final Results of Countervailing Duty Administrative Review* (55 FR 462; January 5, 1990) (*1987 Preliminary and Final Results*)). We have received no new information or evidence of changed circumstances to warrant reconsideration of this finding. Although this program was officially terminated in 1986, under our grant methodology, benefits are still accruing from this program.

To calculate the benefit, we used a declining balance grant methodology, as determined in *Final Affirmative Countervailing Duty Determination; Certain Fresh Cut Flowers From the Netherlands* (52 FR 3301; February 3, 1987) (*Netherlands Flowers*). We allocated the benefits from each grant over 10 years, the average useful life of renewable physical assets in the agricultural sector as determined under the U.S. Internal Revenue Service's Asset Depreciation Range System. This methodology is in accordance with the *Proposed Regulations* (51 FR at 23385). We used the average interest rate for long-term commercial loans published by the Netherlands Bank (the Central Bank) as the discount rate for each year in which grants were provided. We divided the sum of these benefits by the f.o.b. value of total auction sales in the relevant review period. On this basis, we preliminarily determine the net subsidy to be 0.03 percent *ad valorem* for the period January 1, 1994, through December 31, 1994.

2. Glasshouse Enterprises Program

Under the Glasshouse Enterprises Program, the Ministry of Agriculture, Nature Management and Fisheries (MAF) provided grants to greenhouse growers to stimulate private investment in energy saving methods in the horticulture industry. This program was terminated in June 1985. However, grants approved prior to the termination were disbursed through 1987.

Because this program was available only to greenhouse growers, we previously determined that this program was limited to a specific enterprise or industry, or group of enterprises or industries, and provided a countervailable domestic subsidy. (*See 1987 Preliminary and Final Results*). We have received no new information or evidence of changed circumstances to warrant reconsideration of this finding. Although this program officially was terminated in 1985, under our grant methodology, benefits are still accruing from this program.

To calculate the benefit from this program, we used the grant methodology described in section 1. above. We divided the total benefits from these grants by the value of total greenhouse sales in the relevant review period. On this basis, we preliminarily determine the net subsidy to be 0.05 percent *ad valorem* for the period January 1, 1994, through December 31, 1994.

3. Aids for the Reduction of Glass Surface

Under the Aids for the Reduction of Glass Surface program, the MAF provided grants to greenhouse growers for the purpose of increasing the energy efficiency of greenhouses by replacing existing glass with modern energy-saving glass. The program was terminated in November 1984. However, grants approved prior to the termination of the program were disbursed through 1987.

We previously determined that this program was countervailable because it was limited to a specific enterprise or industry, or group of enterprises or

industries. (*See 1987 Preliminary and Final Results*). We have received no new information or evidence of changed circumstances to warrant reconsideration of this finding. Although this program was officially terminated in 1984, under our grant methodology, benefits are still accruing under this program.

To calculate the benefit from this program, we used the grant methodology described in section 1. above. We divided the total benefits from these grants by the value of total greenhouse sales in the relevant review period. On this basis, we preliminarily determine the net subsidy to be less than 0.005 percent *ad valorem* for the period January 1, 1994, through December 31, 1994.

4. Steam Drainage Systems

In January 1981, the Government of the Netherlands (GON) banned the use of methylbromide as a means of soil disinfection due to the potential health hazards caused by the chemical. In December of that year, the MAF established a program making available cash grants to encourage the use of steam drainage as an alternative method of soil disinfection for greenhouses. The program was terminated in September 1984. However, some grants were disbursed through 1987.

In the 1990 administrative review of this case, we determined that this program was countervailable because it was limited to a specific enterprise or industry, or group of enterprises or industries. *See Standard Chrysanthemums From the Netherlands; Preliminary Results of Countervailing Duty Administrative Review* (57 FR 9539; March 19, 1992) and *Standard Chrysanthemums From the Netherlands; Final Results of Countervailing Duty Administrative Review* (57 FR 24249; June 8, 1992) (*1990 Preliminary and Final Results*). We have received no new information or evidence of changed circumstances to warrant reconsideration of this finding. Although this program was officially terminated in 1984, under our grant methodology, benefits are still accruing under this program.

To calculate the benefit from this program, we used the grant methodology described in section 1. above. We divided the benefits from these grants by the value of total greenhouse sales in the relevant review period. On this basis, we preliminarily determine the net subsidy to be less than 0.005 percent *ad valorem* for the period January 1, 1994, through December 31, 1994.

5. Stimulation for the Innovation of Electric Energy (SES)

The SES program was implemented in 1988 to stimulate energy conservation. Under the administration of the Ministry of Economic Affairs (MEA), the program is designed to encourage the installation of cogeneration equipment by providing payments of up to 25 percent of the equipment cost, with a cap of 20 million guilders per project. Cogeneration equipment reduces energy consumption by up to 30 percent.

The Department preliminarily determined that this program is countervailable in *Standard Chrysanthemums From the Netherlands; Preliminary Results of Administrative Review* for the 1992 and 1993 periods (*1992/93 Preliminary Results*), being simultaneously published with this notice, because horticulture received a disproportionate share of benefits under this program.

Our policy with respect to grants is (1) to expense recurring grants in the year of receipt and (2) to allocate non-recurring grants over the average useful life of assets in the industry, unless the sum of grants provided under a particular program is less than 0.50 percent of a firm's total or export sales (depending on whether the program is a domestic or export subsidy) in the year in which the grants were received. *See* section 355.49(a) of the *Proposed Regulations* and the *General Issues Appendix*, at 37226, which is attached to *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria* (58 FR 37217; July 9, 1993) (*General Issues Appendix*).

In the 1992 review, we determined that SES grants were nonrecurring. For the 1992 administrative review, we found that the amount of grants received under this program was not less than 0.50 percent of greenhouse sales. Following our grant methodology, we allocated the grants over the average useful life of assets in the industry. *See 1992/93 Preliminary Results.* As a result, residual benefits from the program are allocable to 1994. Greenhouse growers also received SES grants in 1994. We determine that the total amount of SES grants received was less than 0.50 percent of greenhouse sales in 1994. Therefore, following our grant methodology, the total value of all grants provided under this program in 1994 has been allocated to that year.

To calculate the benefit for 1994, we added the benefit from the 1992 grants that were allocable to 1994 and the total value of grants provided in 1994. We then divided the results by the value of greenhouse sales in 1994. On this basis, we preliminarily determine the net subsidy to be 0.35 percent *ad valorem* for the period January 1, 1994, through December 31, 1994.

II. Programs Preliminarily Determined Not to Confer Subsidies

Guarantee Fund for Agriculture

The Stichting Borgstellingsfonds voor de Landbouw (Foundation Security Fund for Agriculture, or ''Fund'') is used to guarantee the servicing and repayment of loans made by banks to farmers. The Fund acts as an institutional guarantor, not as a lender itself, providing guarantees only when the security offered by the farmer is inadequate for the total loan amount. A loan application may be made to the Fund only after all of the farmer's own securities or collateral have been provided for the loan. If an application is approved under the Fund, the guarantee applies only to the portion of the loan not originally approved by the bank. This program was originally found countervailable in *Netherlands Flowers* because it was administered in such a way as to confer a benefit on a specific group of industries (*i.e., horticulture*).

In reviews subsequent to *Netherlands Flowers,* we found that the average long-term annual interest rates charged on loans under this Fund were consistent with the average interest rates charged on long-term bank loans, as reported by De Nederlandsche Bank. *See 1990 Preliminary and Final Results* and *1992/93 Preliminary Results.*

Based on our analysis of information provided in the 1994 review, we again determine that the average long-term annual interest rates charged on loans under this Fund were consistent with the average interest rates charged on long-term bank loans. On this basis, we determine that this program does not provide a countervailable benefit. Because this program has not been terminated, we will continue to review it in subsequent administrative reviews to determine whether the interest rates on these loans are consistent with the interest rates on comparable commercial loans.

III. Programs Preliminarily Found Not to be Countervailable

We examined the following programs during the 1992 review (*See 1992/93 Preliminary Results)* and determined these programs not to be countervailable:

A. Arrangement for Stimulation of Innovation Projects
B. Arrangement for Structural Improvement and the Complementary

Scheme for Investment in Agricultural Holdings
C. Natural Gas Provided at Preferential Rates
D. Income Tax Deduction
E. Value-Added Tax (VAT) Reduction of 6 Percent for Natural Gas Users and Partial Restitution of VAT for Mineral Oils, Fuels, Bulk or Bottled Gas.

IV. Programs Preliminarily Determined To Be Not Used

We examined the following programs and preliminarily determine that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under these programs during the period of review:

A. Investment Incentive (WIR)—Regional Program
B. Loans at preferential interest rates.

Preliminary Results of Review

For the period January 1, 1994, through December 31, 1994, we preliminarily determine the net subsidies to be 0.43 percent *ad valorem*. In accordance with the Act, any rate less than 0.5 percent *ad valorem* in an administrative review is *de minimis*.

The URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies. The procedures for countervailing duty cases are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. In the original investigation of this order, it was determined that there were over 8,000 flower growers in the Netherlands. Therefore, we requested that the GON provide information on an aggregate basis. *See Netherlands Flowers*. Consistent with the decision made in the investigation, administrative reviews of this order have been conducted on an aggregate basis. In accordance with section 777A(e)(2)(B) of the Act, we have also conducted this administrative review on an aggregate basis because of the large number of producers and exporters, and on the basis of the aggregate information submitted by the GON, we have determined a single country-wide subsidy rate to be applied to all producers and exporters of the subject merchandise.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from the Netherlands exported on or after January 1, 1994, and on or before December 31, 1994. Because we preliminarily determine that all net subsidies are *de minimis* for the period January 1, 1994, through December 31, 1994, no cash deposit will be required.

Public Comment

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case briefs. Parties who submit written arguments in these proceedings are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will ordinarily be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38, are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)).

Dated: April 30, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–11243 Filed 5–3–96; 8:45 am]

BILLING CODE 3510–DS–P

federal register

Monday
May 6, 1996

Part VI

Department of Education

Office of Special Education and Rehabilitative Services; Special Studies Program; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Special Studies Program

AGENCY: Department of Education.

ACTION: Notice of final priorities.

SUMMARY: The Secretary announces final priorities for the Special Studies Program. The Secretary may use these priorities in Fiscal Year 1996 and subsequent years. The Secretary takes this action to focus Federal assistance on identified needs to improve results for children with disabilities. These final priorities are intended to ensure wide and effective use of program funds.

EFFECTIVE DATE: These priorities take effect on July 5, 1996.

FOR FURTHER INFORMATION CONTACT: The name, address, and telephone number of the person at the Department to contact for information on each specific priority is listed under that priority.

SUPPLEMENTARY INFORMATION: The Special Studies Program, authorized by section 618 of Part B of the Individuals with Disabilities Education Act (IDEA), as amended, supports studies to evaluate the impact of the Act, including efforts to provide a free appropriate public education to children and youth with disabilities, and early intervention services to infants and toddlers with disabilities. The results of these studies must be included in the annual report the Department is required to submit to the Congress.

On November 7, 1995, the Secretary published a notice of proposed priorities for this program in the Federal Register (60 FR 56201–56202).

These priorities support the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

The publication of these priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements. Funding of particular projects depends on the availability of funds, and the quality of the applications received. Further, FY 1996 priorities could be affected by enactment of legislation reauthorizing these programs.

Note: This notice of final priorities does not solicit applications. A notice inviting applications under the Testing the Use of An Instrument to Measure Student Progress competition is published in a separate notice in this issue of the Federal Register.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, six parties submitted comments. An analysis of the comments and of the changes in the proposed priorities follows. Technical and other minor changes—as well as suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Priority—Testing the Use of An Instrument to Measure Student Progress

Comment: One commenter noted that the priority should evaluate the use of the PASS Instrument as it applies to students with disabilities at the different ages for which transition planning is required by the Individuals with Disabilities Education Act (IDEA). The commenter recommended that the appropriate age/age range defined by the term ''transition'' assessed by the PASS Instrument should include students ages 14 to exit, not just students at the age of exit (about age 18).

Discussion: The Secretary agrees with the commenter, but notes that the priority as written does not limit the evaluation of the PASS Instrument to any specific age. Rather, the priority allows projects to include a full range of ages as appropriate for transition planning under IDEA.

Changes: None.

Priority—State-Federal Administrative Information Exchange

Comment: One commenter indicated that importance should be given to the development of the information before better methods to exchange information are pursued.

Discussion: The priority as written requires the project to identify, analyze, and synthesize information relative to emerging issues; and provides for the convening of experts, special education administrators, and others to review, plan, and provide leadership in recommending multi-level actions that respond to the emerging issues. The Secretary believes that the commenter's concern regarding the development of information is addressed in other priorities and that this priority serves an important purpose in developing methods to exchange existing information.

Changes: None.

Comment: Four commenters stressed the continuing need for an efficient information exchange between State educational agencies and the Office of Special Education Programs. These four commenters pointed to the fiscal benefits of using existing linkages and communication networks where they exist, rather than expending resources to create new infrastructure. These commenters also stressed the value of building on the knowledge and experience of an organization and staff that is presently providing services comparable to that envisioned under the priority. Three of the commenters specifically recommended that the applicants have extensive experience in special education and administration of the IDEA.

Discussion: The Secretary agrees with the commenters that it is important to stress fiscal efficiency and responsibility. The Secretary also agrees that the utilization of experience and knowledge that exist among State Directors of Special Education and their own communication networks with school districts and service providers in their States should be stressed. The Department will not limit a potential award to an existing provider. However, the Department does evaluate applications on the basis of cost effectiveness, quality of personnel, soundness of the proposal, and how the plan of operation meets the purposes of the priority.

Changes: The language of the priority has been revised to read as follows: ''The project must—* * *(2) Organize, synthesize, interpret, integrate, and facilitate dissemination of information needed for program improvement using already existing information resources and communication networks;''.

Priority: Under 34 CFR 75.105(c)(3)), the Secretary gives an absolute preference to applications that meet any one of the following priorities. The Secretary will fund under these competitions only applications that meet any one of these absolute priorities:

Absolute Priority 1—Testing the Use of An Instrument to Measure Student Progress

Background: The Office of Special Education Programs funded the development and testing of the PASS (Performance Assessment for Self-Sufficiency) system to respond to the needs of local, State, and Federal agencies for information on the post-school services required by students with disabilities as they make the transition to adult service delivery systems. The field test of PASS indicated that the system also had great potential for use in measuring student results. The findings from the field test on the utility of the PASS system

indicate that PASS may be useful for a wide range of purposes including:

- Developing a systematic method of estimating the post-school needs of exiting students with disabilities.
- Developing a transition planning tool that would be used to develop and monitor individualized education/transition plans (IEPs/ITPs), to track student progress, and to be used for follow-up purposes after exiting school.
- Documenting results, identifying programs and curriculum needs, and evaluating programs.
- Improving interagency coordination and teamwork.
- Providing a common database for use at local, State and national levels.

The results of the field test, however, lead the Office of Special Education Programs to conclude that deployment of the PASS at this time is premature and an investigation of the feasibility and utility of the PASS system as a tool for transition planning, and for measuring student results, should continue.

The PASS System. The PASS system has two main components: The PASS Instrument, and the PASS Expert System. The PASS instrument obtains teachers' assessments of four major competency areas related to functional performance skills demanded by adult life. First, teachers complete the PASS instrument which provides ratings of students for a broad array of functional performance indicators in four general domains: Daily Living, Personal and Social Development, Employment, and Educational Performance. The specific skills and behaviors targeted on the PASS instrument are ones that are typically required for adult life and that have service implications. For example, very low performance ratings on several specific indicators—such as ''moves self about in immediate neighborhood'' (e.g., walking, bicycling), ''uses public transportation if available'' (e.g., bus, taxi), ''uses maps and bus schedules when appropriate'', etc.—suggest differing needs for assistance with mobility and transportation aspects of daily living. The PASS also provides information about the student's training, education, and employment, as well as major problem behaviors. No special assessment is required: teachers complete the PASS based on what they already know about the student from direct observation or input from colleagues who work with the student. The instrument was developed in collaboration with well-known transition experts, and involved considerable interaction with State and local administrators and practitioners in both special education and adult services. It has been produced in a machine-scanable format.

The second component is the PASS expert system which is a micro-computer-based program that converts the PASS data into projected service estimates for individuals and groups based on data from the PASS questionnaire. The prototype expert system, which incorporates the knowledge and expertise of more than 30 special education and adult services practitioners across the country, was field tested in over 100 school districts in 10 States to test the feasibility of administrative procedures for collecting PASS data from schools and to guide refinement of the PASS instrument and expert system prototype.

The American Institutes for Research (AIR) developed the rudimentary prototype PASS system and tested its administrative feasibility. AIR developed the following products, which are available from the Office of Special Education Programs: Evaluation of the Utility of the PASS System; Technical Documentation for the PASS Expert System; Technical Manual for the PASS Instrument; User Guide to the PASS Expert System; Report on the Administrative Feasibility of the PASS System; Technical Documentation for the PASS Expert System; Recommendations and Rationales for Revisions to the PASS Instrument and Instructions.

Priority: The Secretary establishes an absolute priority for a project, through a cooperative agreement, to assist the Office of Special Education Programs in evaluating the feasibility and utility of the PASS system: (a) As a tool for transition planning, across all disability categories and levels of severity; and (b) as a tool for measuring student results, across all disability categories and levels of severity. Additionally, the project will validate the expert system's decision rules.

The project must:

(a) Develop the conceptual framework for the study;

(b) Establish a stakeholder group that will advise the project on the study design;

(c) Develop data collection methods and instruments;

(d) Develop methods of data analysis;

(e) Carry out a field test;

(f) Provide guidance and support to States participating in the field test;

(g) Analyze the results of the field test and prepare a final report on the findings of the study; and

(h) Budget for two trips to Washington, D.C. each year. One trip to meet with the OSEP Project Officer and one trip to attend the annual Project Director's Meeting.

For Further Information Contact: Susan Sanchez, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3524, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–8998. FAX: (202) 205–8105. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953. Internet: Susan__Sanchez@ed.gov

Absolute Priority 2—State-Federal Administrative Information Exchange

Background: Information for decisionmaking and policy development to ensure appropriate and effective education and early intervention for all infants, toddlers, children and youth with disabilities is critically important. State and Federal decisionmakers responsible for the implementation of the Individuals with Disabilities Education Act (IDEA) must have access to valid statistics, research findings, and policy options, as well as current information on trends in the providing of special education and related services.

The Office of Special Education Programs (OSEP) within the U. S. Department of Education has the responsibility for Federal administration of IDEA. State education agencies (SEAs), or other designated State agencies under Part H of IDEA, oversee the administration of IDEA at State and local levels. This project will facilitate the access and analysis of administrative and policy information to and from the States and other jurisdictions, and will ensure the flow of communication between the Federal Government and administrators of IDEA at State and local levels.

Priority: The Secretary establishes a priority to facilitate communication between the U.S. Department of Education and State and local administrators of IDEA, and to synthesize national program information that will improve the management, administration, delivery, and effectiveness of programs and services provided under IDEA. The cooperative agreement funded under this priority will provide the Department with a mechanism and resources for analyzing policies and emerging issues that are of significant national concern.

The project must—

(1) Identify national and State program improvement information that is needed to obtain better results in education and provide early intervention services for infants,

toddlers, children, and youth with disabilities;

(2) Organize, synthesize, interpret, integrate, and facilitate dissemination of information needed for program improvement using already existing information resources and communication networks;

(3) Analyze emerging policy or program issues regarding the administration of special education, early intervention, and related services at the Federal, State and local levels; and

(4) Facilitate the use of information at Federal, State and local levels for program improvement for infants, toddlers, children, and youth with disabilities.

The project must organize, coordinate, and maintain a data base of laws, policies, and regulations that govern special education within the States and other jurisdictions; communicate, on a regular basis, with State educational agencies to identify emerging policy issues; obtain, analyze and synthesize information relative to the emerging issues; and convene experts, special education administrators, and others to review, plan, and provide leadership in recommending multi-level actions that respond to the emerging issues. The project must communicate regularly with the Office of Special Education Programs to ensure the continuing flow and development of information that may be required at the Federal level to facilitate the improvement and efficiency of administration of IDEA by the U.S. Department of Education.

Upon request of the OSEP project officer, the project should meet with other funded projects of OSEP for purposes of cross-project collaboration and information exchange. The project must also budget for two trips annually to Washington, D.C. for: (1) A two-day Research Project Directors' meeting; and (2) another meeting to meet and collaborate with the OSEP project officer.

For Further Information Contact: Jane C. Williams, U.S. Department of Education, 600 Independence Avenue S.W., Room 3529, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–9039. FAX: (202) 205–8105. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8125. Internet: Jane__Williams@ed.gov *Applicable Program Regulations:* 34 CFR part 327.

Program Authority: 20 U.S.C. 1418.

Dated: April 26, 1996.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

(Catalog of Federal Domestic Assistance Number 84.159, Special Studies Program)

[FR Doc. 96–11223 Filed 5–3–96; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.159H]

Special Studies Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1996

Purpose of Program: To support studies to evaluate the impact of the Individuals with Disabilities Education Act (IDEA), including efforts to provide a free appropriate public education to children and youth with disabilities, and early intervention services to infants and toddlers with disabilities.

This notice supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

Eligible Applicants: Public or private agencies, institutions, organizations, and other appropriate parties.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 327.

Priority:

Absolute Priority—Testing the Use of An Instrument to Measure Student Progress (84.159H)

The priority Testing the Use of An Instrument to Measure Student Progress in the notice of final priorities for this program, published elsewhere in this issue of the Federal Register, applies to this competition.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Deadline for Transmittal of Applications: June 24, 1996.

Applications Available: May 7, 1996.

Estimated Number of Awards: 1.

Project Period: Up to 36 months.

Available Funds: In fiscal year 1996, the Department proposes to allocate approximately $300,000 to support one award for the first twelve months of the project. In years two and three, the project will be level funded unless there are increases in costs attributable to significant changes in activity level.

Note: The Department of Education is not bound by any estimates in this notice.

For Applications and General Information Contact: Claudette Carey, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 3525, Washington, D.C. 20202–2641. Telephone (202) 205-9864. FAX: (202) 205–8105. Internet: Claudette__Carey@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953. Applications are available in alternative formats upon request.

For Technical Information Contact: Susan Sanchez, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 3528, Washington, D.C. 20202–2641. Telephone: (202) 205-8998. FAX: (202) 205–8105. Internet: Susan Sanchez@ed.gov

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases): or on the World Wide Web at http://www.ed.gov/money.html. However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 20 U.S.C. 1418.

Dated: April 26, 1996.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–11290 Filed 5–3–96; 8:45 am]

BILLING CODE 4000–01–M

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The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a list of public bills from the 104th Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

S.J. Res. 53/P.L. 104–140

Making corrections to Public Law 104–134. (May 2, 1996; 110 Stat. 1327)

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
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0–149	(869–028–00048–7)	6.50	Jan. 1, 1996
150–999	(869–028–00049–5)	19.00	Jan. 1, 1996
1000–End	(869–026–00052–2)	25.00	Jan. 1, 1995
17 Parts:			
1–199	(869–026–00054–9)	20.00	Apr. 1, 1995
200–239	(869–026–00055–7)	24.00	Apr. 1, 1995
240–End	(869–026–00056–5)	30.00	Apr. 1, 1995
18 Parts:			
1–149	(869–026–00057–3)	16.00	Apr. 1, 1995
150–279	(869–026–00058–1)	13.00	Apr. 1, 1995
280–399	(869–026–00059–0)	13.00	Apr. 1, 1995
400–End	(869–026–00060–3)	11.00	Apr. 1, 1995
19 Parts:			
1–140	(869–026–00061–1)	25.00	Apr. 1, 1995
141–199	(869–026–00062–0)	21.00	Apr. 1, 1995
200–End	(869–026–00063–8)	12.00	Apr. 1, 1995
20 Parts:			
1–399	(869–026–00064–6)	20.00	Apr. 1, 1995
400–499	(869–026–00065–4)	34.00	Apr. 1, 1995
500–End	(869–026–00066–2)	34.00	Apr. 1, 1995
21 Parts:			
1–99	(869–026–00067–1)	16.00	Apr. 1, 1995
100–169	(869–026–00068–9)	21.00	Apr. 1, 1995
170–199	(869–026–00069–7)	22.00	Apr. 1, 1995
200–299	(869–026–00070–1)	7.00	Apr. 1, 1995
300–499	(869–026–00071–9)	39.00	Apr. 1, 1995
500–599	(869–026–00072–7)	22.00	Apr. 1, 1995
600–799	(869–026–00073–5)	9.50	Apr. 1, 1995
800–1299	(869–026–00074–3)	23.00	Apr. 1, 1995
1300–End	(869–026–00075–1)	13.00	Apr. 1, 1995
22 Parts:			
1–299	(869–026–00076–0)	33.00	Apr. 1, 1995
300–End	(869–026–00077–8)	24.00	Apr. 1, 1995
23	(869–026–00078–6)	22.00	Apr. 1, 1995
24 Parts:			
0–199	(869–026–00079–4)	40.00	Apr. 1, 1995
200–219	(869–026–00080–8)	19.00	Apr. 1, 1995
220–499	(869–026–00081–6)	23.00	Apr. 1, 1995
500–699	(869–026–00082–4)	20.00	Apr. 1, 1995
700–899	(869–026–00083–2)	24.00	Apr. 1, 1995
900–1699	(869–026–00084–1)	24.00	Apr. 1, 1995
1700–End	(869–026–00085–9)	17.00	Apr. 1, 1995
25	(869–026–00086–7)	32.00	Apr. 1, 1995
26 Parts:			
§§ 1.0-1–1.60	(869–026–00087–5)	21.00	Apr. 1, 1995
§§ 1.61–1.169	(869–026–00088–3)	34.00	Apr. 1, 1995
§§ 1.170–1.300	(869–026–00089–1)	24.00	Apr. 1, 1995
§§ 1.301–1.400	(869–026–00090–5)	17.00	Apr. 1, 1995
§§ 1.401–1.440	(869–026–00091–3)	30.00	Apr. 1, 1995
§§ 1.441-1.500	(869-026-00092-1)	22.00	Apr. 1, 1995
§§ 1.501–1.640	(869–026–00093–0)	21.00	Apr. 1, 1995
§§ 1.641–1.850	(869–026–00094–8)	25.00	Apr. 1, 1995
§§ 1.851–1.907	(869–026–00095–6)	26.00	Apr. 1, 1995
§§ 1.908–1.1000	(869–026–00096–4)	27.00	Apr. 1, 1995
§§ 1.1001–1.1400	(869–026–00097–2)	25.00	Apr. 1, 1995
§§ 1.1401–End	(869–026–00098–1)	33.00	Apr. 1, 1995
2–29	(869–026–00099–9)	25.00	Apr. 1, 1995
30–39	(869–026–00100–6)	18.00	Apr. 1, 1995
40–49	(869–026–00101–4)	14.00	Apr. 1, 1995

Title	Stock Number	Price	Revision Date
50–299	(869–026–00102–2)	14.00	Apr. 1, 1995
300–499	(869–026–00103–1)	24.00	Apr. 1, 1995
500–599	(869–026–00104–9)	6.00	[4] Apr. 1, 1990
600–End	(869–026–00105–7)	8.00	Apr. 1, 1995
27 Parts:			
1–199	(869–026–00106–5)	37.00	Apr. 1, 1995
200–End	(869–026–00107–3)	13.00	[6] Apr. 1, 1994
28 Parts:			
1-42	(869–026–00108–1)	27.00	July 1, 1995
43-end	(869-026-00109-0)	22.00	July 1, 1995
29 Parts:			
0–99	(869–026–00110–3)	21.00	July 1, 1995
100–499	(869–026–00111–1)	9.50	July 1, 1995
500–899	(869–026–00112–0)	36.00	July 1, 1995
900–1899	(869–026–00113–8)	17.00	July 1, 1995
1900–1910 (§§ 1901.1 to 1910.999)	(869–026–00114–6)	33.00	July 1, 1995
1910 (§§ 1910.1000 to end)	(869–026–00115–4)	22.00	July 1, 1995
1911–1925	(869–026–00116–2)	27.00	July 1, 1995
1926	(869–026–00117–1)	35.00	July 1, 1995
1927–End	(869–026–00118–9)	36.00	July 1, 1995
30 Parts:			
1–199	(869–026–00119–7)	25.00	July 1, 1995
200–699	(869–026–00120–1)	20.00	July 1, 1995
700–End	(869–026–00121–9)	30.00	July 1, 1995
31 Parts:			
0–199	(869–026–00122–7)	15.00	July 1, 1995
200–End	(869–026–00123–5)	25.00	July 1, 1995
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–026–00124–3)	32.00	July 1, 1995
191–399	(869–026–00125–1)	38.00	July 1, 1995
400–629	(869–026–00126–0)	26.00	July 1, 1995
630–699	(869–026–00127–8)	14.00	[5] July 1, 1991
700–799	(869–026–00128–6)	21.00	July 1, 1995
800–End	(869–026–00129–4)	22.00	July 1, 1995
33 Parts:			
1–124	(869–026–00130–8)	20.00	July 1, 1995
125–199	(869–026–00131–6)	27.00	July 1, 1995
200–End	(869–026–00132–4)	24.00	July 1, 1995
34 Parts:			
1–299	(869–026–00133–2)	25.00	July 1, 1995
300–399	(869–026–00134–1)	21.00	July 1, 1995
400–End	(869–026–00135–9)	37.00	July 5, 1995
35	(869–026–00136–7)	12.00	July 1, 1995
36 Parts			
1–199	(869–026–00137–5)	15.00	July 1, 1995
200–End	(869–026–00138–3)	37.00	July 1, 1995
37	(869–026–00139–1)	20.00	July 1, 1995
38 Parts:			
0–17	(869–026–00140–5)	30.00	July 1, 1995
18–End	(869–026–00141–3)	30.00	July 1, 1995
39	(869–026–00142–1)	17.00	July 1, 1995
40 Parts:			
1–51	(869–026–00143–0)	40.00	July 1, 1995
52	(869–026–00144–8)	39.00	July 1, 1995
53–59	(869–026–00145–6)	11.00	July 1, 1995
60	(869-026-00146-4)	36.00	July 1, 1995
61–71	(869–026–00147–2)	36.00	July 1, 1995
72–85	(869–026–00148–1)	41.00	July 1, 1995
86	(869–026–00149–9)	40.00	July 1, 1995
87–149	(869–026–00150–2)	41.00	July 1, 1995
150–189	(869–026–00151–1)	25.00	July 1, 1995
190–259	(869–026–00152–9)	17.00	July 1, 1995
260–299	(869–026–00153–7)	40.00	July 1, 1995
300–399	(869–026–00154–5)	21.00	July 1, 1995
400–424	(869–026–00155–3)	26.00	July 1, 1995
425–699	(869–026–00156–1)	30.00	July 1, 1995
700–789	(869–026–00157–0)	25.00	July 1, 1995
790–End	(869–026–00158–8)	15.00	July 1, 1995
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–026–00159–6)	9.50	July 1, 1995
101	(869–026–00160–0)	29.00	July 1, 1995
102–200	(869–026–00161–8)	15.00	July 1, 1995
201–End	(869–026–00162–6)	13.00	July 1, 1995
42 Parts:			
1–399	(869–026–00163–4)	26.00	Oct. 1, 1995
400–429	(869–026–00164–2)	26.00	Oct. 1, 1995
430–End	(869–026–00165–1)	39.00	Oct. 1, 1995
43 Parts:			
1–999	(869–026–00166–9)	23.00	Oct. 1, 1995
1000–3999	(869–026–00167–7)	31.00	Oct. 1, 1995
4000–End	(869–026–00168–5)	15.00	Oct. 1, 1995
44	(869–026–00169–3)	24.00	Oct. 1, 1995
45 Parts:			
1–199	(869–022–00170–7)	22.00	Oct. 1, 1995
200–499	(869–026–00171–5)	14.00	Oct. 1, 1995
500–1199	(869–026–00172–3)	23.00	Oct. 1, 1995
1200–End	(869–026–00173–1)	26.00	Oct. 1, 1995
46 Parts:			
1–40	(869–026–00174–0)	21.00	Oct. 1, 1995
41–69	(869–026–00175–8)	17.00	Oct. 1, 1995
70–89	(869–026–00176–6)	8.50	Oct. 1, 1995
90–139	(869–026–00177–4)	15.00	Oct. 1, 1995
140–155	(869–026–00178–2)	12.00	Oct. 1, 1995
156–165	(869–026–00179–1)	17.00	Oct. 1, 1995
166–199	(869–026–00180–4)	17.00	Oct. 1, 1995
200–499	(869–026–00181–2)	19.00	Oct. 1, 1995
500–End	(869–026–00182–1)	13.00	Oct. 1, 1995
47 Parts:			
0–19	(869–026–00183–9)	25.00	Oct. 1, 1995
20–39	(869–026–00184–7)	21.00	Oct. 1, 1995
40–69	(869–026–00185–5)	14.00	Oct. 1, 1995
70–79	(869–026–00186–3)	24.00	Oct. 1, 1995
80–End	(869–026–00187–1)	30.00	Oct. 1, 1995
48 Chapters:			
1 (Parts 1–51)	(869–026–00188–0)	39.00	Oct. 1, 1995
1 (Parts 52–99)	(869–026–00189–8)	24.00	Oct. 1, 1995
2 (Parts 201–251)	(869–026–00190–1)	17.00	Oct. 1, 1995
2 (Parts 252–299)	(869–026–00191–0)	13.00	Oct. 1, 1995
3–6	(869–026–00192–8)	23.00	Oct. 1, 1995
7–14	(869–026–00193–6)	28.00	Oct. 1, 1995
15–28	(869–026–00194–4)	31.00	Oct. 1, 1995
29–End	(869–026–00195–2)	19.00	Oct. 1, 1995
49 Parts:			
1–99	(869–026–00196–1)	25.00	Oct. 1, 1995
100–177	(869–026–00197–9)	34.00	Oct. 1, 1995
178–199	(869–026–00198–7)	22.00	Oct. 1, 1995
200–399	(869–026–00199–5)	30.00	Oct. 1, 1995
400–999	(869–026–00200–2)	40.00	Oct. 1, 1995
1000–1199	(869–026–00201–1)	18.00	Oct. 1, 1995
1200–End	(869–026–00202–9)	15.00	Oct. 1, 1995
50 Parts:			
1–199	(869–026–00203–7)	26.00	Oct. 1, 1995
200–599	(869–026–00204–5)	22.00	Oct. 1, 1995
600–End	(869–026–00205–3)	27.00	Oct. 1, 1995

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869–026–00053–1)	36.00	Jan. 1, 1995
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Subscription (mailed as issued)		264.00	1996
Individual copies		1.00	1996
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Complete set (one-time mailing)		244.00	1994
Complete set (one-time mailing)		223.00	1993

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1994 to March 31, 1995. The CFR volume issued April 1, 1994, should be retained.